

United States
Circuit Court of Appeals

For the Ninth Circuit.

NORTH PACIFIC STEAMSHIP COMPANY, a
Corporation, Claimant of the Steamer
"ROANOKE," Her Boilers, etc.,
Appellant,

vs.

A. SJOGREN, J. E. JOHNSON, A. DISHER, GEO.
M. REED, G. W. JACOBS, GEO. K. BEK-
KER, M. MEISLAHN, P. CAIN, F. G.
PALMER, CHRISTIAN CHRISTENSEN,
A. JOHNSEN, OSKAR JOHANSEN, A. C.
ANDERSEN, E. ANDERSON, H. ANDREA-
SEN, J. PITTS, J. MARTIN, W. E. PITTS,
E. ANDREWS, R. TENNANT, B. FRAN-
KEL, K. G. CLARK, V. MATSON, A. FRA-
SER, M. STALEY (FAHEY, W. KRE-
MER, A. S. CASKEY, S. B. NILSEN, A. G.
CLARKE, J. KOTCHARIN, C. GIBSON,
—— HANSEN,

Appellees.

Apostles.

Upon Appeal from the United States District Court for
the Northern District of California,

First Division.

FILED

JAN 5 - 1914

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Praecepta for Apostles.]

*In the District Court of the United States, Northern
District of California, First Division.*

IN ADMIRALTY.

OSKAR JOHANSEN et al.,
Libelants and Appellees,
vs.

The Steamer "ROANOKE," etc.

NORTH PACIFIC STEAMSHIP COMPANY, a
Corporation,
Claimant and Appellant.

To the Clerk of the Above-entitled Court:

You are hereby instructed to prepare the apostles on the appeal herein in the Circuit Court of Appeals, to consist of the following:

1. A caption exhibiting the style of the court and the title of the cause and a statement showing the time of the commencement of the suit; the names of the parties, setting forth the original parties and those who have become parties before the appeal.

2. The libel and the date when the same was filed.

3. The process of the arrest of the steamer "Roanoke."

4. The claim filed by North Pacific Steamship Company, a corporation, claimant herein, together with stipulation and undertaking filed therewith.

5. The answer of said claimant together with the amendments thereof.

6. Statement of the time when the trial was had and the name of the judge hearing the same. [1*]

7. Testimony on the part of the libelants taken before Francis Krull, Esq., Commissioner and in open court, during the trial of said cause, together with the exhibits filed.

8. Testimony on the part of the claimant taken at the trial of said cause, together with the exhibits filed.

9. All orders, acts and proceedings of the above-entitled court to which exceptions were made.

10. The opinion of the Court filed herein.

11. The final decree.

12. Notice of appeal.

13. Undertaking on appeal for costs and super-sedeas.

14. The assignments of error.

Dated: October 20th, 1913.

15. Exceptions to claimant's answer and ruling thereon.

CHARLES H. SOOY,
DAVID L. LEVY,

Proctors for Claimant and Appellant.

Receipt of a copy of the within Praeceptum to Clerk admitted this 23d day of October, 1913.

F. R. WALL,
Proctor for Libelants.

[Endorsed]: Filed Oct. 23, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2]

*Page-number appearing at foot of page of original certified Record.

[Statement of Clerk, U. S. District Court.]

*In the District Court of the United States in and for
the Northern District of California, First Di-
vision.*

No. 15,401.

OSKAR JOHANSEN et al.,

Libelants.

vs.

The Steamer "ROANOKE," Her Boilers, Engines,
etc.

Respondent.

PARTIES.

Libelants: Oskar Johansen, H. Meislahn, P. Cain,
F. G. Palmer, George K. Bekker, Christen
Christensen, Alf Johnsen, A. C. Andersen, E.
Andersson, H. Andreasen, A. Fraser, O. Havness,
M. Staley, W. Kremer, V. Matson, J. Kot-
charin, C. Gibson, A. Sjogren, B. Frankel, K.
G. Clark, A. S. Caskey, S. B. Nilsen, George M.
Reed, G. W. Jacobs, A. Disher, J. E. Johnson,
W. E. Pitts, G. Drew, A. G. Clarke, J. Martin,
E. Andrews, J. Pitts, and R. Tennant. [3]

Respondent: The steamer "Roanoke," her boilers,
engines, machinery, tackle, apparel, and other
furniture.

Claimants: North Pacific Steamship Company.

PROCTORS.

For Libelants: F. R. Wall, Esquire, San Francisco,
California.

For Respondents and Claimants: C. H. Sooy, Esquire, and David L. Levy, Esquire, San Francisco, California.

April 26th, 1913. Filed verified Libel for Salvage services, etc. [4]

In the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,401.

OSKAR JOHANSEN et al.,

Libelants,

vs.

The Steamer "ROANOKE," etc.

Libel for Salvage.

To the Honorable United States District Court, in and for the Northern District of California, First Division:

The libel of Oskar Johansen, H. Meislahn, P. Cain, F. G. Palmer, George K. Bekker, Christen Christensen, Alf Johnsen, A. C. Andersen, E. Andersson, H. Andreasen, A. Fraser, O. Havness, M. Staley, W. Kremer, V. Matson, J. Kotcharin, C. Gibson, A. Sjogren, B. Frankel, K. G. Clark, A. S. Caskey, S. B. Nilsen, George M. Reed, G. W. Jacobs, A. Disher, J. E. Johnson, W. E. Pitts, G. Drew, A. G. Clarke, J. Martin, E. Andrews, J. Pitts and R. Tennant, lately composing all of the officers and crew of the steamer "Santa Clara" (except the master and chief engineer), for themselves, and on behalf of all others entitled and not pleaded, against

the steamer "Roanoke," her boilers, engines, machinery, tackle, apparel and other furniture, in a cause of salvage, civil and maritime, alleges as follows:

1. That at all of the times hereinafter mentioned, each of the above-named libelants was a seaman on board of the steamer "Santa Clara," regularly employed on board of said steamer; that said steamer was at all of said times a vessel of about 1500 tons gross register and was employed on regular voyages between Pacific Coast ports of the United States in carrying cargo and passengers between said ports and was of the value of about \$150,000.

2. That on or about the 9th day of April, 1913, the said steamer "Santa Clara" left San Francisco, in the State of California, bound for Port Harford, the port of San Luis Obispo, in said State, with each and all of said libelants on board of her and constituting her full complement of officers and crew (except as to the master and chief engineer); that about 10 o'clock in the forenoon of April 10, 1913, while said steamer was on said voyage with said

May be used as original:

C. H. SOOY and
D. L. LEVY,

Proctors for Claimant.

I consent that this copy of the libel may be used in the place and stead of the original.

F. R. WALL,
Proctor for Libelants. [5]

libelants on board of her as aforesaid and while said steamer was about one hour's run from the said port of San Luis Obispo, a wireless message was received by said steamer "Santa Clara" from the steamer "Roanoke"; that said wireless message stated that said steamer "Roanoke" was just south of Point Arguello, California, and has lost her propeller and was drifting on shore and that the wind where said "Roanoke" then was was blowing from the sea toward the shore and that the weather where said "Roanoke" then was was foggy and that said "Roanoke" was in need of assistance and asked that said "Santa Clara" come at once to the assistance of said "Roanoke"; that thereupon the course of said "Santa Clara" was changed so as to head in the direction of said Point Arguello, and said "Santa Clara" thereupon steamed in the direction of said Point Arguello for a period of about seven hours; that while steaming toward said Point Arguello as aforesaid, said steamer "Santa Clara" ran into a thick fog and that said fog continued to prevail until after the steamer "Roanoke" was taken in tow by said steamer "Santa Clara" as hereinafter stated; that when said steamer "Santa Clara" arrived off Point Arguello, said steamer "Roanoke" was found lying at an anchor about half or three-quarters of a mile from the shore near Point Arguello; that said steamer "Roanoke" was then and there in great danger because of the facts that she had lost her propeller [6] and was without any means of propulsion or control and that the wind was blowing on shore and that the winds where she then was are

apt to blow with great violence during the month of April, and that heavy weather was likely to be experienced by her at any time, and that the place where said "Roanoke" was at anchor was an exposed and open place in about 20 fathoms of water, and that the coast to the north of said "Roanoke" was rocky and dangerous and the coast to the eastward of said "Roanoke" was an open exposed beach and that there was then and there a thick fog prevailing; that because of the thick fog then and there prevailing, and that had prevailed, navigation was dangerous for the steamer "Santa Clara" and because of said fog said "Santa Clara" came dangerously near colliding with said "Roanoke," to the great risk and danger of these libelants; that said "Roanoke," was taken from her said position by said "Santa Clara" and was taken in tow by said "Santa Clara" between 6 and 7 o'clock in the afternoon of said 10th of April and was towed by her in the direction of said port of San Luis Obispo, but that said "Santa Clara" arrived off said port in the night-time and was compelled to lie off said port with said "Roanoke" in tow until the next morning. That on the morning of April 11, 1913, said "Santa Clara" took the said "Roanoke" into said port of San Luis Obispo and placed said "Roanoke" in a position of safety.

3. That by reason of the rendering of the aforesaid salvage services, each of said libelants is entitled to be awarded by this Court a substantial sum as salvage for the services rendered by each of said libelants in salving said "Roanoke" as aforesaid,

that the value of said "Roanoke" at the time she was salved and brought into a port of safety as aforesaid was about the sum of \$325,000; that each of said libelants ask that this Court award to each of them such proportion of the gross amount awarded for [7] said salvage as to this Court may seem meet and proper in the premises.

4. That said steamer "Roanoke" is now in the port of San Francisco and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

5. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, each of said libelants prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said steamer "Roanoke," her boilers, engines, machinery, tackle, apparel and other furniture, and that all persons having or pretending to have any right, title or interest therein may be cited to appear and answer, upon oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree such a sum of money or proportion of the value of the said steamer "Roanoke," her boilers, engines, machinery, tackle, apparel and other furniture, to each of said libelants and others, salvors, as a compensation for their salvage services, as shall seem meet and reasonable, together with their costs and expenses in this behalf sustained; and that the said steamer "Roanoke," her boilers, engines, ma-

chinery, tackle, apparel and other furniture, may be condemned and sold to pay the same; and that each of said libelants may have such other and further relief as in law and justice he may be entitled to receive.

F. R. WALL,
Proctor for said Libelants. [8]

State of California,
City and County of San Francisco,—ss.

F. G. Palmer, being first sworn, deposes and says: That he is one of the persons named as the libelants in the above and foregoing libel; that he has read said libel and knows the contents thereof, and that the same is true of his own knowledge.

F. G. PALMER.

Subscribed and sworn to before me this 26th day of April, 1912.

.....

[Endorsed]: Filed Sep. 26, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [9]

Monition and Return of U. S. Marshal.

Northern District of California,—ss.

The President of the United States of America,
to the Marshal of the United States for
[Seal] the Northern District of California,
Greeting.

Whereas, a Libel hath been filed in the District Court of the United States for the Northern District of California, on the 26th day of April, in the year

of our Lord, one thousand nine hundred and thirteen.

By Oskar Johansen et als., against The Steamer "Roanoke," etc., her tackle, apparel and furniture, in a cause of libel for salvage, civil and maritime for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said vessel, her tackle, etc., may for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libelant.

YOU ARE THEREFORE HEREBY COMMANDED to attach the said vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for the Northern District of California, on the 13th day of May, A. D., 1913, at 10 o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, [10] otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf.

And what you shall have done in the premises do you then and there make return thereof, together with this writ.

WITNESS, the Hon. WM. C. VAN FLEET, Judge of said Court, at the City and County of San Francisco, in the Northern District of California, this 26th day of April, in the year of our Lord, one thousand nine hundred and thirteen, and of our independence, the one hundred and 37th.

W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

F. R. WALL,
Proctor for Libelant.

MARSHAL'S RETURN.

In obedience to the within Monition, I attached the steamer "Roanoke" therein described, on the 28th day of April, 1913, and have given due notice to all persons claiming the same that this Court will, on the 13th day of May, 1913 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of seizure on the herein named steamer "Roanoke."

I further return that I served the within Monition by handing to and leaving with, Richard Dickson, Captain and Master in [11] charge, of the said steamer "Roanoke" a copy of this Monition at the Union Iron Works, on the Bay of San Francisco, in

12 *North Pacific Steamship Company*

the city of San Francisco, Cal.

This, 28th day of April, 1913.

C. T. ELLIOTT,

United States Marshal.

By I. W. Grover,

Office Deputy.

[Endorsed]: Filed May 1, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [12]

*In the District Court of the United States of
America, Northern District of California.*

IN ADMIRALTY—No. —

OSKAR JOHANSEN et al.,

Libelants,

vs.

The Steamer "ROANOKE," etc.

Claim of North Pacific Steamship Co.

To the Honorable WM. C. VAN FLEET, Judge of
the District Court of the United States for the
Northern District of California:

The claim of North Pacific Steamship Company to
the steamer "Roanoke," her tackle, apparel and fur-
niture, now in the custody of the Marshal of the
United States for the said Northern District of Cal-
ifornia, at the suit of Oskar Johansen alleges—

That North Pacific Steamship Co., the true and
bona fide owner of the said steamer "Roanoke," her
tackle, apparel and furniture, and that no other per-
sons is owner thereof.

Wherefore th. . claimant. . prays that this Honor-

able Court will be pleased to decree a restitution of the same to North Pacific Steamship Co. and otherwise right and justice to administer in the premises.

NORTH PACIFIC STEAMSHIP CO.

By C. H. SOOY,
Attorney in Fact.

————— deposes and says that he was and is the master of said vessel, and that at the time of the said arrest thereof, he was in possession of the same as the lawful bailee thereof for the said owner., and that said owner.. reside.. out of the said Northern [13] District of California, and more than one hundred miles from the city of San Francisco, in said District.

C. H. SOOY,
Proctor for Claimant.

Northern District of California,—ss.

Subscribed and sworn to before me this 28th day of April, A. D. 1913.

[Seal] FRANCIS KRULL,
Deputy Clerk U. S. District Court Northern District
of California.

[Endorsed]: Filed Apr. 28, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [14]

*In the United States District Court, in and for the
Northern District of California, First Division.*

IN ADMIRALTY—No. —

OSKAR JOHANSEN et al.,

Libelants,

vs.

The Steamer "ROANOKE," etc.

Stipulation for Release of Vessel.

Whereas a libel was filed in the above-entitled court, on the 26th day of April, 1913, by Oskar Johansen and others, against the steamer "Roanoke," etc., for the reasons and causes in said libel mentioned, it is now stipulated and agreed that upon the claimant of said vessel giving the usual admiralty stipulation, pursuant to the rules and practice of this Court conditioned to appear in the suit and abide by all orders of the Court, interlocutory or final, in the cause, and to pay all damages awarded by the final decree rendered therein, in the sum of three thousand dollars (\$3,000), with the Illinois Surety Company as surety, that the said steamer "Roanoke," attached under process issued in pursuance of the prayer of the said libel, may be released from said attachment and restored to the claimant of said vessel.

F. R. WALL,

Proctor for Libelants.

[Endorsed]: Filed Apr. 28, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [15]

No. 15,401.

*District Court of the United States for the Northern
District of California, First Division.*

IN ADMIRALTY.

Stipulation.

(STIPULATION—BOND—FOR RELEASE.)

Entered into *in* pursuant to the Rules of Practice
of This Court.

WHEREAS, a Libel was filed on the 26th day of April, in the year of our Lord one thousand nine hundred and thirteen, by Oskar Johansen et al., against The Str. "Roanoke," etc., for the reasons and causes in the said Libel mentioned; and, whereas, the said Str. is in the custody of the United States Marshal, under the process issued in pursuance of the prayer of said libel, and whereas the said steamer has been claimed by North Pacific Steamship Company; and, whereas, it has been stipulated that said steamer "Roanoke," etc., may be released from arrest upon the giving and filing of an Admiralty Stipulation in the sum of Three Thousand (\$3,000) dollars, as appears from said Stipulation now on file in said Court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or their sureties, execution for the above amount may issue against their goods, chattels and lands:

NOW, THEREFORE, the condition of this Stipulation is such, that if the stipulators undersigned

shall at any time, upon the Interlocutory or final Order or Decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon notice of such Order or Decree, to C. H. Sooy, Esquire, Proctor for the Claimant of said Str. "Roanoke," etc. abide by and [16] pay the money awarded by the final Decree rendered by the Court or the Appellate Court if any appeal intervene, then this Stipulation to be void, otherwise to remain in full force and virtue.

NORTH PACIFIC STEAMSHIP CO.

By C. H. SOOY,
Attorney in Fact.

ILLINOIS SURETY COMPANY,

By CHARLES T. HUGHES,
Its Attorney in Fact.

[Seal]

Taken and acknowledged this 28th day of April, 1913, before me.

[Seal]

FRANCIS KRULL,
United States Commissioner, Northern District of
California.

Northern District of California,—ss.

Charles T. Hughes, as the atty. in fact for Illinois Surety Company, party to the above stipulation, being duly sworn, depose and say, for himself, that the Illinois Surety Company is worth the sum of Five Hundred Thousand (\$500,000) dollars over and above all his just debts and liabilities.

CHARLES T. HUGHES,
Atty. in Fact for Illinois Surety Co.

Sworn to this 28th day April, 1913, before me,
[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of
California.

[Endorsed]: Filed the 28th day of Apr. 1913. W.
B. Maling, Clerk. By Francis Krull, Deputy Clerk.
[17]

*In the United States District Court, in and for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,401.

OSKAR JOHANSEN et al.,

Libelants,

vs.

The Steamer "ROANOKE," etc.

**Answer of Claimant North Pacific Steamship
Company to Libel for Salvage.**

The answer of North Pacific Steamship Company, a corporation, claimant herein, to the libel of Oskar Johansen et al., vs. The Steamer "Roanoke," her boilers, engines, etc., in a cause of salvage against said ship, alleges and denies as follows:

I.

Claimant avers that it has no knowledge or information sufficient to form a belief as to the allegations contained in Article I of said libel, to wit:

"That at all the times hereinafter mentioned each of the above-named libelants was a seaman on board of the steamer 'Santa Clara' regularly employed on board of said steamer";

And therefore neither admits nor denies the same but leaves said allegation to be proved by said libelants as they may be able to do so and as they may be advised, except that as to libelants B. Frankel, J. E. Johnson, W. E. Pitts, G. Drew, A. G. Clarke, J. Martin, E. Andrews, J. Pitts and R. Tenant, claimant alleges that said B. F. Frankel was at [18] the times mentioned in said libel, purser on board of said steamer and said other libelants last mentioned were at said times stewards on board of said steamer.

II.

Upon the same ground as above stated, and with the exceptions above set forth, claimant neither admits nor denies the allegations contained in Article II of said libel, that each and all of said libelants were on board of said steamer "Santa Clara," and constituted her full complement of officers and crew (except as to the Master and Chief Engineer), but leaves said allegations to be proved by said libelants as they may be able to do so and as they may be advised.

III.

Denies that the wireless message alleged to have been received by said steamer "Santa Clara" from said steamer "Roanoke" stated that said steamer "Roanoke" was drifting on shore or that the wind where said steamer "Roanoke" then was was blowing from the east toward the shore or that the weather where said steamer "Roanoke" then was, was foggy or that said alleged message contained any statement of such character or import, or that

said statements so alleged to have been contained in said message or any statement of such character or import, were facts.

IV.

Denies that said steamer "Santa Clara" thereupon or at any time, or at all, steamed in the direction of said Pt. Arguello for a period of about seven hours or for any period longer than six hours.

V.

As to the allegations contained in said libel that [19] while steaming toward said Pt. Arguello, said steamer "Santa Clara" ran into a thick fog and that said fog continued to prevail until after said steamer "Roanoke" was taken in tow by said steamer "Santa Clara," claimant avers that from the time when said steamer "Santa Clara" received said alleged message from said steamer "Roanoke" until about 3:30 of said afternoon of April 10th, 1913, and while said steamer "Santa Clara" was proceeding toward Pt. Arguello, said steamer "Santa Clara" encountered nothing but clear and calm weather and smooth seas, and during said time said steamer "Santa Clara" encountered no thick fog whatsoever, and claimant denies that said steamer "Santa Clara" ran into a thick or any fog at any time prior to 3:30 o'clock in the afternoon of said day, or that said or any fog prevailed or continued to prevail at all prior to that time.

VI.

Denies that when said steamer "Santa Clara" arrived off Pt. Arguello said steamer "Roanoke" was found lying at anchor about $\frac{1}{2}$ or $\frac{3}{4}$ of a mile from

the shore near Pt. Arguello or at any distance from said shore less than $1\frac{1}{2}$ miles, or that said steamer "Roanoke" was so lying at the distance alleged or at any distance from said shore, less than about $1\frac{1}{2}$ miles.

VII.

Denies that said steamer "Roanoke" was then and there, or at any time, or at all, in great or any danger because of the facts alleged in said libel or because of any facts whatever, or for any reason whatever.

VIII.

Denies that the wind was blowing on shore or that the winds where said steamer "Roanoke" then was are apt to [20] blow with great or any violence during the month of April, or that heavy weather was likely to be experienced by said steamer "Roanoke" at any time, and in this connection libelant avers that the weather which prevailed at said time and at said place was calm and the sea smooth and showed every indication of remaining so.

IX.

Denies that navigation was dangerous for said steamer "Santa Clara" for the reasons alleged in said libel or for any reason whatever; denies that said steamer "Santa Clara" came dangerously, or at all, near colliding with said steamer "Roanoke" to the great or any risk or danger of said libelants or any of them, for the reasons alleged in said libel or for any reason whatever, and in this behalf claimant avers that said steamer "Santa Clara" was proceeding at a speed of less than 8 miles per hour;

that the whistle of said steamer "Roanoke" was being blown continuously and could be heard and was heard by said "Santa Clara" for a period of half an hour before said "Santa Clara" reached the place where said "Roanoke" was at anchor; that at no time did said "Santa Clara" come up to any distance less than four or five hundred feet from said "Roanoke."

X.

Denies that the acts and things alleged in said libel to have been done constituted salvage services, or that by reason thereof, each or any of said libelants is entitled to be awarded by this Court a substantial or any sum as salvage for the services alleged to have been rendered by each or any of them; denies that any services whatever were rendered by each or any of said libelants in salving said [21] "Roanoke," and in this connection claimant avers that the tow lines and towing gear used in towing said "Roanoke" belonged to said "Roanoke," and that said lines were taken in a rowboat by members of the crew of said "Roanoke" to said "Santa Clara," and that the only services performed by any member of the crew of said "Santa Clara" in this connection was to make said tow line fast; that said service was slight and unimportant and involved no danger or risk whatever to said libelants or any of them, except as to that hereinabove alleged, required no services whatever to be performed; that said "Roanoke" lay in the course of said "Santa Clara."

XI.

Denies that the value of said "Roanoke" at the

time she is alleged to have been salvaged and brought into a port of safety was about the sum of \$325,000.00, or any sum greater than \$150,000.00.

XII.

Claimant avers that both said steamer "Roanoke" and said steamer "Santa Clara" are and at all the times in said libel mentioned were owned, maintained and operated by this claimant and were associated ships and members of the same fleet visiting ports along the Pacific Coast for the purpose of carrying freight and passengers, passing and repassing each other in the course of their voyages; that each vessel of the fleet to which said steamers belong and at said times belonged are and at all said times for a long time prior thereto, have been instructed to render assistance of every kind and character to other vessels of said fleet whenever necessary; that said steamer "Santa Clara" was expressly ordered by this claimant to render assistance to said "Roanoke" [22] and all and any acts or things done or alleged to have been done by said "Santa Clara" by way of assistance to said "Roanoke" were rendered under and in compliance with the express order and command of this claimant.

XIII.

That it is and since a long time prior to the 10th day of April, 1913, has been mutually understood by seamen in the employ of claimant on board of vessels belonging to this claimant, including said "Roanoke" and said "Santa Clara," and it was at all said times among said seamen a well-established usage that the wages paid to and received by them from this claim-

ant were paid and received as full and complete compensation for any and all services performed by them for this claimant, or at the command or request of this claimant or its duly authorized agent, irrespective of the particular vessel for or upon which such services might be performed, or whether such services were performed in rendering assistance to vessels belonging to this claimant other than that upon which such seamen might be employed; that in recognition of such understanding and usage, the Captain and Chief Engineer of said "Santa Clara," who were such at the times alleged in said libel, have made no claim for salvage, have disclaimed all intention of making such claim and have denied the existence of any ground therefor.

WHEREFORE claimant prays that the libel be dismissed.

Dated: June 11th, 1911.

C. H. SOOY,

DAVID L. LEVY,

Proctors for Claimant. [23]

State of California,

City and County of San Francisco,—ss.

Chas. P. Doe, being first duly sworn, deposes and says: That he is an officer, to wit: President of the North Pacific Steamship Company, claimant in the above-entitled action, and makes this affidavit for and on behalf of said company; that he has read the foregoing answer to Libel and knows the contents thereof and that the same is true of his own knowledge.

CHAS. P. DOE.

Subscribed and sworn to before me this 11th day
of June, 1913.

[Seal]

EUGENE W. LEVY,

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Jun. 11, 1913. W. B. Maling,
Clerk. By C. W. Callbreath, Deputy Clerk. [24]

*In the United States District Court, in and for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,401.

OSKAR JOHANSEN et al..

Libelants,

vs.

The Steamer "ROANOKE," etc.

Exceptions to Answer.

The libelants in the above-entitled libel hereby except to the answer of claimant in said Libel, as follows:

First. That all of said answer, from line 18 on page 1 thereof down to and including the word "advised" in line 27 on said page 1, is neither relevant nor pertinent, and that the same is scandalous and insufficient.

Second. That article numbered "II," on page 2, of said answer, and each and every part of said article, is neither relevant nor pertinent, and that the same is scandalous and insufficient.

In which particulars the libelants insist that the claimant's answer is irrelevant, impertinent, scan-

dalous and insufficient.

WHEREFORE, said libelants except thereto, and pray that the parts of said answer excepted to be expunged with costs to said claimant, and that said claimant be compelled to file a further relevant, pertinent and sufficient answer.

F. R. WALL,
Proctor for Libelants.

Received a copy of the within exceptions to answer this 19th day of June, 1913.

C. H. SOOY and
D. L. LEVY,
Proctors for Claimants. [25]

[Endorsed]: Filed Jun. 19, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [26]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 19th day of August, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,401.

JOHANSON

vs.

Str. "ROANOKE," etc.

Order Submitting Exceptions to Answer.

The exceptions to the answer herein this day came on for hearing and after hearing proctors, by the

Court ordered that said exceptions stand submitted to the Court for determination. [27]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 21st day of August, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,401.

OSKAR JOHANSEN et al.,

vs.

Str. "ROANOKE," etc.

Order Sustaining Exceptions to Answer of Claimant.

The exceptions to the Answer herein having been heretofore submitted to the Court for decision, now, after due consideration had by the Court, ordered that said exceptions be and the same are hereby sustained: Further ordered that respondent be and is hereby granted five days to amend if so advised.

[28]

*In the United States District Court, in and for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,401.

OSCAR JOHANSEN et al.,

Libelants,

vs.

The Steamer “ROANOKE,” etc.

**Amendment to Answer of Claimant North Pacific
Steamship Company to Libel for Salvage.**

Now comes North Pacific Steamship Company, a corporation, claimant herein, and by leave of court first had and obtained files this its amendments to its answer to the libel of Oskar Johansen et al., vs. The Steamer “Roanoke,” her boilers, engines, etc., in a cause of salvage now on file herein, and denies as follows:

I.

Claimant denies that at all the times in said libel mentioned, or at any time, or at all, each or any of the libelants was a seaman on board the steamer “Santa Clara” or regularly or at all employed on board of said steamer, except that as to libelants B. Frankel, J. E. Johnson, W. E. Pitts, G. Drew, A. G. Clarke, J. Martin, E. Andrews, J. Pitts and R. Tenant, claimant alleges that said B. F. Frankel was at the times mentioned in said libel purser on said steamer and that said other libelants last mentioned were at said times stewards on board of said steamer.

II.

Denies that each or all or any of said libelants were on board of said steamer or constituted her full or any complement of officers or crew (except as to the Master and Chief Engineer) on the day alleged in said libel, or any time, or at all.

Wherefore, claimant prays that the libel be dismissed.

CHAS. H. SOOY and
DAVID L. LEVY,
Proctors for Claimant.

State of California,
City and County of San Francisco,—ss.

Chas. H. Sooy, being first duly sworn, deposes and says: That he is an officer, to wit: Assistant Secretary of the North Pacific Steamship Company, claimant in the above-entitled action, and makes this affidavit for and on behalf of said company; that he has read the foregoing answer to Libel and knows the contents thereof and that the same is true of his own knowledge.

C. H. SOOY,
Asst. Secretary.

Subscribed and sworn to before me this 26th day of August, 1913.

[Seal] E. W. LEVY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Aug. 28, 1913. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [30]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 16th day of September, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,401.

OSKAR JOHANSEN et al.

vs.

Str. "ROANOKE," etc.

Minutes of Trial.

This cause this day came on for hearing, F. R. Wall, Esq., appearing as proctor for libelant, and Messrs. C. H. Sooy and David Levy, appearing as proctors for claimant; Mr. Wall stated the case and introduced in evidence the testimony taken on reference before a United States Commissioner, and called Thomas Geruderson, Richard Dixon, G. M. Jessen, who were each duly sworn and examined for libelant.

Mr. Sooy recalled Richard Dixon as a witness on behalf of claimant, and also recalled G. M. Jessen as a witness on behalf of claimant, and called Charles P. Doe, who was duly sworn and examined as a witness on behalf of claimant. Claimant introduced certain exhibits, which were marked Claimant's Exhibits "A" and "B," respectively. The case was then continued until September 20th, 1913, at 9 o'clock A. M., for argument. [31]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 20th day of September, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,401.

OSKAR JOHANSEN et al.

vs.

Str. "ROANOKE," etc.

Order Submitting Cause.

This cause this day came on for argument and after hearing F. R. Wall, Esq., in behalf of libelant and C. H. Sooy, Esq., in behalf of claimant, by the Court ordered this cause be and the same is hereby submitted to the Court for decision. [32]

In the District Court of the United States, in and for the Northern District of California, First Division.

Hon. M. T. DOOLING, Judge.

OSKAR JOHANSEN et al.,

Libelants,

vs.

The Steamer "ROANOKE," etc.,

Claimant.

Testimony Taken in Open Court.

September 16th, 1913—September 20th, 1913.

APPEARANCES.

F. R. WALL, Esq., for the Libelants.

C. H. SOOY, Esq., and DAVID LEVY, Esq., for the Claimant. [33*—1†]

Mr. WALL.—If the Court please, this is a libel *in rem* against the steamer “Roanoke” by the officers and crew of the “Santa Clara” with the exception of the master and first officer, chief steward and perhaps one or two others who do not join in the libel. I will not take the time of the Court in reading the pleadings, but I will state that in a general way the facts are that the “Santa Clara,” while on her way from San Francisco to San Luis Obispo, leaving San Francisco on the 9th of April, and while within about one hour and a half steaming of San Luis Obispo, received a wireless message from the “Roanoke” stating that the “Roanoke” had lost her propeller and was in need of assistance, and the “Santa Clara” then changed her course and instead of proceeding to her destination, San Luis Obispo, proceeded to the southward and found the “Roanoke” at anchor about a mile and a half to the south of Point Arguello with her tail-shaft broken and both blades of the propeller broken, with a moderate westerly wind, and took her in tow, and towed her up to San Luis Obispo, where she was

*Page-number appearing at foot of page of certified Apostles.

†Original page-number appearing at foot of page of Testimony as same appears in Certified Apostles.

anchored and later turned over to the "Sea Rover." The answer of the claimant—

Mr. LEVY.—If I may interrupt counsel for a moment, your Honor will remember that certain exceptions to the original answer were sustained and we took the leave that your Honor entered to amend and file the amendments. Since that time we have drafted the answer in an amended form including the original answer and the amendments subsequently filed, so instead of the original answer and amendments and so forth we would like to file now an amended answer.

The COURT.—Does it change it any?

Mr. LEVY.—Not at all except the statutes; we desire [34—2] to plead the statute of the State of California, Section 2079 of the Civil Code of the State of California, which has application to the matter of salvage and we desire to plead it out of an abundance of caution because in the cases I found I have not found any which hold that the District Court sitting as a Court of Admiralty can take judicial notice of the Statutes of the State.

The COURT.—Is there any objection in filing it?

Mr. WALL.—Yes, it should not have been delayed until this time. The rule in the Admiralty Court is that an amended pleading is never filed, but the amendment to the pleading is put in, and there has been ample time not to spring this at the eleventh hour and fifty-ninth minute.

Mr. LEVY.—It is merely pleading a matter of law out of an abundance of caution, and I found cases which say the federal courts do take judicial

notice of the laws of various States.

Mr. WALL.—It is fundamental they do.

Mr. LEVY.—And further they administer the laws of the various States; in other words, it seems to have in contemplation a case where the citizen of one state is suing a citizen of the other state and the federal courts take jurisdiction by reason of the diverse citizenship of the parties.

The COURT.—The Court will take knowledge of the statute.

Mr. WALL.—We will stipulate if necessary that the Court can do so.

The COURT.—The filing will not be permitted.

Mr. WALL.—That the Court can take judicial notice [35—3] is elemental and fundamental.

The COURT.—I understand. All that you want to do is to get that statute before the Court.

Mr. LEVY.—Yes.

Mr. WALL.—After the denial the claimant sets out that the two vessels were owned by the same owner, the North Pacific Steamship Company. “That each vessel of the fleet to which said steamers belong and at said times belonged, are and at all said times for a long time prior thereto, have been instructed to render assistance of every kind and character to other vessels of said fleet whenever necessary; that said steamer ‘Santa Clara’ was expressly ordered by this claimant to render assistance to said ‘Roanoke’ and all and any acts or things done or alleged to have been done by said ‘Santa Clara’ by way of assistance to said ‘Roanoke’ were rendered under and in compliance with the express

order and command of this claimant.

“That it is and since a long time prior to the 10th day of April, 1913, has been mutually understood by seaman in the employ of claimant on board of vessels belonging to this claimant, including said ‘Roanoke’ and said ‘Santa Clara,’ and it was at all said times among said seamen a well-established usage that the wages paid to and received by them from this claimant were paid and received as full and complete compensation for any and all services performed by them for this claimant, or at the command or request of this claimant or its duly authorized agent, irrespective of the particular vessel for or upon which such services might be performed, or whether such services were performed in rendering assistance [36—4] to vessels belonging to this claimant other than that upon which such seaman might be employed; that in recognition of such understanding and usage, the Captain and Chief Engineer of said ‘Santa Clara,’ who were such at the times alleged in said libel, have made no claim for salvage, have disclaimed all intention of making such claim and have denied the existence of any ground therefor.” That, in a general way are the issues and state of the pleadings. Do you wish to make any further opening statement at this time?

Mr. LEVY.—I think not.

Mr. WALL.—I will say that a large part of the testimony of the libelant has been taken, your Honor, before the Commissioner and I will now offer that testimony on behalf of the libelants so taken in evidence. I will call Captain Gunderson.

[**Testimony of Thomas Gunderson, for Libelants.**]

THOMAS GUNDERSON, called for the libelants, sworn.

Mr. WALL.—Q. Give your name and occupation, please, Captain.

A. Thomas Gunderson; pilot of the fire boat, San Francisco pilot at the present time.

Q. What papers do you hold?

A. Unlimited master's license.

Q. How long have you been going to sea?

A. Since I was 14 years; 36 years.

Q. How long have you been going to sea on this coast as master? A. Since 1890.

Q. During your experience as master have you gone up and down the coast to the south of San Francisco passing Point [37—5] Arguello?

A. Yes, sir, all that time.

Q. How many times have you been up and down by Point Arguello?

A. Oh, four or five hundred times.

Q. Have you ever been inshore near Point Arguello with any vessel, near there?

A. I have never been inshore; I have been very close to the shore.

Q. Have you ever been near there while you have had to discharge cargo?

A. At Surf, I discharged lumber between Arguello and Conception.

Q. Conception is to the south of Point Arguello?

A. Yes, sir, 13 miles.

Q. In going up and down by Arguello have you

(Testimony of Thomas Gunderson.)

been able to acquire any information as to the nature of the coast from Point Arguello to the southward?

A. From Arguello to about three miles south is a very rocky coast.

Q. How is it off Point Arguello?

A. Very rocky.

Q. Off Rocky Point?

A. It is rocky all along there about three miles distance. There is a reef about one-half mile off of Rocky Point.

Q. Do you know the steamer "Roanoke"?

A. I do.

Q. I will ask you first before that, Captain, how does the anchorage on the coast—how does the coast from Point Arguello to about a mile and a half or two miles to the southward compare with other points on the coast as a safe part of the coast?

A. I consider it one of the most dangerous parts of the Pacific Coast.

Q. If the steamer "Roanoke" were at anchor a mile and a half to the south of Point Arguello in a fog with a moderate [38—6] swell setting from the westward to the eastward and with her tail shaft broken, what would you say would be her position as to a position of safety, or one of danger?

Mr. SOOY.—Objected to as assuming something that is not in evidence, and no proper foundation being laid for the question.

Mr. WALL.—The evidence has already been offered, if your Honor please.

The COURT.—I have not seen it.

(Testimony of Thomas Gunderson.)

Mr. SOOY.—It does not include all the facts.

The COURT.—Are all the facts included. Is it true she was anchored in the fog. Is there any testimony that she was anchored in the fog?

Mr. SOOY.—Yes.

The COURT.—A mile and a half or two miles to the south from Point Arguello?

Mr. SOOY.—Yes.

The COURT.—With her tail shaft broken?

Mr. SOOY.—Yes.

The COURT.—With a moderate swell?

Mr. SOOY.—Yes.

The COURT.—That is all that has been included in the question.

Mr. SOOY.—There is one fact left out. It appeared in the testimony that there was a light northwest wind.

Mr. WALL.—Q. I will add “with a light or moderate westerly or northwest wind” to the question.

A. I consider she is in a dangerous position.

Q. What is the nature of the holding ground, if you know, [39—7] southward of Point Arguello about a mile and a half or two miles in 14½ fathoms or in that locality?

A. The chart says it is a sandy bottom there, not very good holding ground.

Q. From your experience what is the fact as to swells being experienced in that locality, as to their springing up?

A. Well, sometimes it springs up pretty rapidly.

Mr. WALL.—That is all.

(Testimony of Thomas Gunderson.)

Cross-examination.

Mr. SOOY.—Q. Captain, you say you have been up and down the coast of California you think 500 times? A. Yes, sir.

Q. And in your capacity as master of different steam schooners on this coast? A. Yes, sir.

Q. You say that the holding ground in the ocean three miles south of Point Arguello is not good holding ground. You mean by that, I presume, that the anchor will not hold in that kind of ground; is that true?

A. I do not consider a sandy bottom good holding ground.

Q. You say that particular ground is not good holding ground. By that you mean the anchor will not hold in that kind of ground. Is that what you mean? A. Yes, sir.

Q. Did you ever have occasion to drop your anchor in any of that stretch of ocean-bed there three miles south of Point Arguello? A. No, sir.

Q. Then, just how do you know, Captain, the character of the ocean-bed there?

A. I said the chart gives it a sandy bottom. I do not know it, I said the chart gives [40—8] it.

Q. In your opinion, Captain, is there any difference between sandy bottoms. Can there be different kinds of sandy bottoms, or are they all alike in your opinion? A. I guess there is a difference.

Q. There is a difference? A. Yes, sir.

Q. Did you say the sandy bottom down there is any different from any other sandy bottom, or not?

(Testimony of Thomas Gunderson.)

A. I did not say it was any different.

Q. So that all you know, then, Captain, about whether or not an anchor will hold in that particular stretch of beach is from what you have gleaned from the Government chart; is it not, from the fact it is a sandy bottom—is that true? A. Yes, sir.

Q. That is all the knowledge you have on the subject? A. Yes, sir, on that particular place.

Q. About three miles south of Point Arguello?

A. Yes, sir.

Q. If you were told, Captain, that the “Roanoke” had her starboard anchor over within three miles of Point Arguello and that one anchor did hold the vessel for some 10 or 12 hours would you be surprised at that, or would you think that the starboard anchor of the “Roanoke” would hold her in?

A. No, sir, I would not be surprised.

Q. You would not be surprised? A. No, sir.

Q. What do you call good holding ground, Captain? A. Clay, clay bottom.

Q. Any rock in it?

A. If it is rock it is good holding ground too. If your anchor has hold of rock you will break the [41—9] anchor before the holding ground will go.

Q. Then you would say that a rock ocean-bed combined with clay would not be so good as a sandy bottom in so far as its holding qualities are concerned? A. It would be better.

Q. The rock and clay would be better?

A. Yes, sir.

Q. Are you familiar with any of the anchorages

(Testimony of Thomas Gunderson.)

along the coast outside of this stretch of land that you have testified to?

A. Well, I have anchored a good many places along the coast.

Q. Where?

A. I anchored about 8 miles below Point Arguello unloading a cargo of lumber.

Q. At what point?

A. It is about eight miles south of Arguello. It don't have any particular name.

Q. Was that a sandy bottom or rock?

A. Rock, I broke my anchor.

Q. You did break your anchor? A. Yes, sir.

Q. Did you ever anchor in sandy bottoms along there?

A. No, sir, I anchored below Point Conception; that is a sandy bottom, but it is more sheltered.

Q. Is it not a fact in Monterey County, or Watsonville or Santa Cruz, in places like that the anchors hold better after they have become buried in the sand than they do in places where anchors cannot take hold?

A. I understand it is quicksand in Monterey, the anchor gets buried.

Q. So where sand is shifting sand that makes the best ground, holding ground? A. I guess so.

Q. If the sand below Point Arguello were the same kind of [42—10] sands as found in Monterey Bay then you would say it would be good holding ground?

A. I do not know if it is the same kind.

(Testimony of Thomas Gunderson.)

Q. If it were the same kind you would say it was good holding ground? A. Yes, sir.

Q. You know, as a matter of fact, you can put one anchor over, the starboard or port anchor any place in Monterey Bay and that the tide washing up and down will bury that anchor and it finds the best kind of holding ground. As a seafaring man you know that? A. It holds.

Q. And that is the best kind of holding ground?

A. Yes, sir.

Q. I want to ask you this question. You have stated if the "Roanoke," which vessel I understand you to testify you are acquainted were anchored with her starboard anchor one mile and a half off-shore and one mile and a half or two miles below Point Arguello you would say the vessel was in a dangerous position. That is your statement, is it not? A. Yes, sir.

Q. Why do you say she would be in a dangerous position?

A. If it blows up a strong northwest wind or there is a swell she cannot get out of there without assistance.

Q. Then would you say that those are the only reasons of her being in danger. That is the only reason she would be in danger, is it not, the question of swell or wind? A. Yes, sir.

Q. Those two reasons? A. Yes, sir.

Q. Now, then, if no wind sprang up, Captain, and no swell came up from the west, the vessel then would

(Testimony of Thomas Gunderson.)

not be in any [43—11] danger, would she?

A. Not as long as the anchor would hold.

Q. As long as her anchor held, no wind sprang up, no swell came from the west that vessel is in no more danger than she would be in any other place along the coast? A. I think so.

Q. Have you ever been north of Point Arguello on the Pacific Coast? A. Yes, sir, I have.

Q. All up and down the coast, have you not?

A. Yes, sir.

Q. Do you know where Point Buchon is?

A. Yes, sir.

Q. Do you know a place five or six miles from Point Buchon where there is a bluff beach and many rocks jutting out of the ocean?

A. Pescadero Point.

Q. Yes, along in there? A. Yes, sir.

Q. Would you say that is a dangerous beach or would you say it is not so dangerous?

A. I think that is another dangerous place; a mean place.

Q. Is it not a fact that is considered one of the worse stretches along this coast by seafaring men?

A. That all depends what position you get in there. You have no right to get in so close there.

Q. Of course, no place is dangerous unless you get on the rocks. You are never in any danger until you get on the rocks?

A. You are in danger before you get on the rocks.

(Testimony of Thomas Gunderson.)

It is too late, your danger is all over when you are on the rocks.

Q. Is that a dangerous coast along there?

A. It is dangerous anywhere if you lose your propeller or shaft. You are in a bad fix as well as any other place. [44—12]

Q. You know where Surf is on the coast?

A. Yes, sir.

Q. You remember the ill-fated "Santa Rosa"?

A. Yes, sir, I was there when she went ashore.

Q. I thought so. There are not any rocks there, are there? A. Sure.

Q. Where the vessel went ashore? A. Yes, sir.

Q. Are they sticking up out of the ocean?

A. Not very much.

Q. That is mostly sand? A. Rock bottom.

Q. There is sand on the beach? A. Yes, sir.

Q. That is north of Point Arguello?

A. Yes, sir.

Q. Could you imagine any place on the coast of California that would be any worse for vessels to go ashore than Surf? A. Oh, yes.

Q. You remember the "Santa Rosa" wreck, don't you? A. Yes, sir, I saw it.

Q. Can you imagine anything that could happen any worse to a vessel than have her break in two?

A. Yes, sir, she stood there all day.

Q. Did she break that day? A. Yes, sir.

Q. Could anything happen worse to a vessel than that?

(Testimony of Thomas Gunderson.)

A. She could not knock all to pieces in a couple of hours.

Q. There was no sea to amount to anything that day? A. There was in the evening.

Q. There was not in the morning?

A. It was pretty smooth in the morning.

Q. So you would say there are places worse than Surf to go ashore? A. Yes, sir.

Q. If a vessel anchoring one mile or a mile and a half from [45—13] Surf with a westerly wind and a small swell running, as long as that anchor held there would be no more danger there than any other place on the coast? A. Not if she had steam.

Q. I am not asking you about that. Assume your boiler had broken down?

A. No, sir, she would be in danger.

Q. As long as her anchor held. That is what I am asking you. Is Point Arguello any worse place for a vessel to go ashore than any other of a half dozen places along the coast?

A. It is a very rocky coast. The steam schooner "Laye" went ashore there and lasted about three hours.

Q. Was there any swell?

A. Ordinary weather.

Q. You remember when the "Laye" went ashore there was a heavy sea from the west?

A. I heard she was going all to pieces; the men and crew never got anything out of her.

Q. That is quite true. Could not that happen any place out of 50 places on the coast of California?

(Testimony of Thomas Gunderson.)

A. Yes, sir; I could pick out 50 places just as bad.

Q. So you would not say it was any worse there?

A. I said it was one of the worse.

Q. There are many other places just as bad north and south? A. Yes, sir.

Q. Are you familiar with Port Harford and the coast along in there? A. Yes, sir.

Q. What would you say would happen to a vessel that was anchored with her starboard anchor out off Port Harford outside the breakwater with a westerly wind, little westerly wind and with a westerly swell if the anchor chain should part [46—14] and she would drift ashore; would you say she was in danger?

A. Yes, sir, if she had no steam.

Q. She had no steam and the anchor chain parted and she drifted inshore, she would be in danger?

A. Yes, sir.

Q. And you would say she was in a dangerous place, would you not? A. Yes, sir.

Q. Would you say she would be in any less danger than she would be in at Point Arguello?

A. Yes, sir; the coast is not so rocky around there, you have a chance to get on the sand beach when you get in. There are fewer rocks there, you are less liable to hit them there, you are more liable to get a sandy beach.

Q. If you did get a sandy bottom there with rocks around on anchoring the vessel is liable to meet with the fate of the "Santa Rosa"? A. Not in there.

Q. You do not think she would break up?

(Testimony of Thomas Gunderson.)

A. Not in Port Harford.

Q. I am speaking either side there, either north or south? A. North she would break up.

Q. And if she were right up at Port Harford without any steam with a westerly wind and she drifted in there, unless she got to shore she would break up too?

A. There is a harbor there, a breakwater.

Q. Suppose it was outside the breakwater?

A. If she hit the rocks she would break up.

Mr. SOOY.—That is all.

Mr. WALL.—Captain Dickson's testimony has already been [47—15] taken, but I want to ask him a few additional questions.

[Testimony of Richard Dickson, for Libelants.]

RICHARD DICKSON, called for the libelants, sworn.

Mr. WALL.—Q. You testified that your tail shaft broke about five minutes after 10 o'clock on the morning of the 10th of April; that is correct, is it not? A. Yes, sir.

Q. And that you anchored at 10 minutes after 11?

A. In that neighborhood,—somewhere in there.

Q. You saw the light-house, Point Arguello Light-house, somewhere between 8 and 9 o'clock before the fog shut in? A. Yes, sir.

Q. How far off was the light-house from you at the time you saw it between 8 and 9 o'clock to the best of your judgment?

A. About 12 miles, between 10 and 12 miles, I will say.

(Testimony of Richard Dickson.)

Q. And where were you when your tail shaft broke?

A. We were about, to the best of my recollection, we were about three miles south by east of Point Arguello.

Q. About three miles south by east of Point Arguello? A. Yes, sir.

Q. When you discovered that your tail shaft was broken?

A. Yes, sir, that was by my reckoning; of course, it was thick fog.

Q. Did you take any soundings immediately after your tail shaft broke? A. We did.

Q. How much water were you in right after the breaking of the tail shaft?

A. 15 fathoms. That is by this sounding we took. 17 fathoms at first; between 17 and 20 fathoms.

Q. Somewhere between 17 and 20 fathoms?

A. Yes, sir. [48—16]

Q. From that time until you came to an anchor you drifted from 17 fathoms to 14 and one-half; is that correct?

A. Fourteen and one-half fathoms when we anchored.

Q. Did you have any sail on the "Roanoke" after the tail shaft broke?

A. I had two sails, but I did not use them.

Q. You had two sails but you did not use them?

A. Yes, sir, because it was dead calm; I could not use them.

Q. After you anchored was there a breeze any

(Testimony of Richard Dickson.)

time? A. It came all the time.

Q. All the time? A. Yes, sir.

Q. What sails does the "Roanoke" have altogether? A. A jib and main sail.

Q. Just a jib and main sail? A. Yes, sir.

Q. What is the square feet of canvas?

A. That I do not exactly know; I never measured it.

Q. What is the tonnage of the "Roanoke"?

A. She is 1654 net and 2354 gross.

Q. How much horse-power would it take to give her steerageway?

A. It would not take her much to give her steerageway; 25 or 20 horse-power would give her steerageway.

Q. You could not get steerageway on her with a jib and main sail?

A. I never have tried it; she would drift sideways.

Q. It would balance her; when the jib paid her off the mainsail would bring her up in the wind and she would drift to leeward? A. Yes, sir.

Q. You said on your direct examination that when you came to anchor off Port San Luis it was about eleven o'clock in the morning?

A. To the best of my recollection it was five [49—17] minutes past eleven; from between there to 15 minutes past eleven.

Q. I am speaking of Port Harford, not Point Arguello. A. Between 5 and 6 o'clock.

Q. You came to an anchor where?

A. Outside of the breakwater of San Luis.

(Testimony of Richard Dickson.)

Q. How far were you?

A. About a mile south southeast of the breakwater.

Q. How far is that from the town?

A. Quite a distance.

Q. About how far?

A. In the neighborhood of a mile and three-quarters or two miles. There is no town there, only a hotel and a couple of houses; from the wharf, I mean, about in that neighborhood.

Q. You had a wireless on board? A. We had.

Q. In operation. There is nothing the matter with it? A. No, sir.

Q. When you anchored there did you consider that you were anchored in a safe place?

A. I did under the circumstances.

Q. And the "Sea Rover" took you in tow at what time?

A. I did not understand. Do you mean at Port San Luis?

Q. Yes.

A. I considered we were just about in the same position as we were in at Point Arguello.

Q. You considered that you were in a safe position?

A. I did if a tug had been there, but there was none.

Q. When did the tug get there?

A. She got there about 11 o'clock that forenoon.

Q. She took you in tow as soon as she got there?

A. She did.

Q. What time did the "Santa Clara" leave you?

(Testimony of Richard Dickson.)

A. Between 5 and 6 in the morning, to the best of my recollection. [50—18]

Q. After the tug "Sea Rover" took you in tow where did she take you to? A. San Francisco.

Q. Did you consider that you were in any danger at Point Arguello?

A. No more than the other place.

Q. Did you consider you were in any danger at Port Harford?

A. The two places about the same.

Q. You did not consider you were in any danger at either place?

A. I say the two places about the same.

Q. Did you consider you were in danger at either place?

A. Not under the condition of the weather we had there right along.

Cross-examination.

Mr. SOOY.—Q. When you dropped anchor on April 10th, I understand you to say it was about 10 minutes past 11 in the morning you discovered that the tail shaft of the "Roanoke" was broken?

A. Yes, sir.

Q. At that time you were bound from San Pedro to San Francisco? A. Yes, sir.

Q. As captain of that vessel? A. I was.

Q. You had how many passengers? A. 95.

Q. And you had on some cargo?

A. Yes, sir, very light though.

Q. And when you first learned that your tail shaft was broken you immediately took soundings, as I

(Testimony of Richard Dickson.)

understand it? A. Yes, sir.

Q. And you found that you had how many fathoms of water?

A. In the neighborhood of 17 fathoms of water, to the best of my recollection.

Q. Was that a little too deep to anchor? [51—19]

A. I could have anchored there, but I wanted to put a boat over and have a good look to see what the matter was; in the meantime the vessel was drifting.

Q. You put the boat over with some men in it?

A. Yes, sir.

Q. I understand. You permitted your boat to drift a little towards shore? A. Yes, sir.

Q. How far?

A. I do not remember how far. We drifted until we got in 14½ fathoms of water, and we lay there.

Q. The "Roanoke" was south of Point Arguello?

A. Yes, sir.

Q. About how far?

A. To the best of my belief and judgment—I could listen to the whistle, I did not see the point at any time from the time we anchored, to the best of my judgment we should be probably two miles or a mile and a half south by east of Point Arguello, according to the whistle of my ear.

Q. Were you in the regular course of vessels between San Pedro and San Francisco at the time the tail shaft of the "Roanoke" was broken?

A. Absolutely on the course.

Q. So that then you drifted in an easterly direction towards the coast before you dropped your

(Testimony of Richard Dickson.)

anchor? A. We did.

Q. And you drifted for how long approximately?

A. From five minutes past 10 to the best of my recollection until quarter past 11.

Q. In that time did you drift a mile and a half or two miles? A. No, sir.

Q. How much? A. A very short distance.

Q. Did you drift one-half a mile?

A. It would not be that much. [52—20]

Q. It would not exceed one-half a mile?

A. No, sir.

Q. After you had dropped your anchor, Captain, you were then out of the regular path of the regular course of vessels between San Francisco and San Pedro, were you not?

A. No, sir, the steamer was going right by us, alongside the outside of us and one steamer went inside of us during the time we lay to anchored, just a little before the "Santa Clara" came to us.

Q. Of course, that was after you commenced whistling? A. Yes, sir.

Q. I am speaking about vessels that were plying up and down? A. We were inside.

Q. You were inside of their track? A. Yes, sir.

Q. And they passed out to the seaward side of where you were at anchor? A. Yes, sir.

Q. This one vessel that passed inside heard your whistle and came in there to see what was the matter? A. I presume she did.

Q. There was a thick fog, as I understand it?

A. Yes, sir.

(Testimony of Richard Dickson.)

Q. Was there any wind? A. No, sir.

Q. Was there any swell?

A. Very light swell from the westward.

Q. Is it not a fact, Captain, there is always a slight swell on the Pacific Coast?

A. I never passed there yet that I have not seen some swell.

Q. Is that point any different from the other points as to the swell?

A. I never found it any different.

Q. There is always a swell on the Pacific Coast?

A. Yes, sir.

Q. At the time you discovered the tail shaft was broken was [53—21] there any excitement on board? A. No, sir.

Q. You had passengers on board and some cargo, I understand? A. Yes, sir.

Q. Was the crew excited at all? A. No, sir.

Q. Perfectly calm? A. Everything calm.

Q. What was the first thing you did after you discovered the tail shaft was broken?

A. To find out what ships were around.

Q. How did you ascertain that?

A. By wireless; I tried to find out by wireless what ships would be around there.

Q. The "Roanoke" is fitted with wireless apparatus?

Mr. WALL.—This is not proper cross-examination. I would like to have it understood that the witness is their own and we would like to cross-examine him on any of these things.

(Testimony of Richard Dickson.)

Mr. SOOY.—I do not want to encroach upon the rights of counsel. I think counsel has gone into this thoroughly.

Mr. WALL.—There is nothing about his effort to secure aid from any other source.

Mr. SOOY.—I think you went into the matter of wireless messages and so on.

Mr. WALL.—I asked him if he had a wireless and if the wireless was working off Port Harford.

The COURT.—This is not cross-examination of anything brought out by counsel.

Mr. SOOY.—Q. Was the “Roanoke” at any time after she weighed her starboard anchor in any danger as long as the weather remained as it was when you dropped your anchor?

A. From the time we dropped our anchor?

Q. Yes.

A. During the time we lay there? [54—22].

Q. Yes, was she in any danger?

A. None; her anchor chain was hanging perpendicular up and down the ship all the time we lay there.

Q. And you had her starboard anchor over the side?

A. Her starboard anchor and 60 fathoms of chain; that is 320 feet.

Q. Did you have any other anchor on board?

A. I had the port anchor, about 500 pounds already to drop in case I see any sign of wind before it came in, or in case I should want to use it I had it already to drop it.

(Testimony of Richard Dickson.)

Q. You did not drop it, as a matter of fact?

A. I had no occasion to do so.

Q. As long as the anchor, the starboard anchor held the vessel was in no danger? A. No, sir.

Q. If the starboard anchor had not held, not been sufficient to hold that vessel you still had your port anchor? A. Yes, sir.

Q. It was a heavier anchor? A. Yes, sir.

Q. And it would hold more than the starboard anchor?

A. I had 90 fathoms on the anchor, on both anchors I could have given her more chain on the 60 fathoms.

Q. As I understand it, you were towed by the "Santa Clara"—I believe you went into Port Harford, you were towed in there, to Port Harford. I want to confine myself, your Honor, strictly to the cross-examination. A. Yes, sir.

Q. How did you get from your position at that anchorage to Port Harford with the "Roanoke"?

A. By the assistance of the steamer "Santa Clara." [55—23]

Q. By the assistance of the steamer "Santa Clara"? A. Yes, sir.

Q. Did you take any of the passengers off of the "Roanoke" on to the "Santa Clara" when she came there?

A. No, sir, I kept them on the "Roanoke."

Q. How far is it from your position at that anchorage to Port Harford?

A. To the best of my recollection it is about 32 miles.

(Testimony of Richard Dickson.)

Q. The "Santa Clara" reached you what time of day?

A. Five o'clock in the afternoon of the 10th of April.

Q. Did the "Santa Clara" have any lines aboard to tow you with?

A. She did not use them. She said she did not use any. We got our own tow lines ready to use them.

Q. How were those towing lines put aboard the "Santa Clara?" Just tell his Honor how that was accomplished.

Mr. WALL.—That was gone into fully on the captain's testimony when it was taken. It is not cross-examination, and it was gone into in detail.

Mr. SOOY.—I think at this time it might be proper for the purpose of getting the matter before his Honor here.

The COURT.—I will have to read those depositions anyway.

Mr. SOOY.—I think it is proper that we go into it at this time.

The COURT.—It would be satisfactory to me if we had the time.

Mr. WALL.—That was all gone into with the greatest detail.

Mr. SOOY.—We have not cross-examined the testimony of the captain as to that point.

Mr. WALL.—You had an opportunity to do so.
[56—24]

Mr. SOOY.—We have our own methods, your

(Testimony of Richard Dickson.)

Honor, of putting in our case, and we attempt to follow the rules of evidence.

Mr. WALL.—I object to it as not proper cross-examination.

The COURT.—The objection is sustained.

Mr. SOOY.—Q. You were anchored off of Port Harford after the “Santa Clara” let go of the towing line of the “Roanoke,” were you not?

A. Yes, sir.

Q. And you have testified that you were how far from Port Harford?

A. I would say in the neighborhood of about a mile south southeast of the breakwater, or a mile and a half from the wharf.

Q. And were you outside the breakwater at Port Harford? A. We were to the southward.

Q. And outside? A. To the south and east of it.

Q. What is the character of the shore immediately south of Port Harford?

A. South of Port Harford is kind of sandy and rock but to the eastward of Port Harford is more rock; I should say about one mile and a half to the east of the anchorage is as rocky as Point Arguello, and in fact worse because the rocks and reefs are sticking away outside.

Q. Were you in any better position in so far as the safety of your vessel was concerned after the “Santa Clara” left you than you were before she picked you up?

A. We had the Pacific Ocean on us on both places.

(Testimony of Richard Dickson.)

The COURT.—That is hardly an answer to that question.

Mr. SOOY.—Q. Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. We were right in the open roadstead in both places. We [57—25] were anchored in a sandy bottom in both places.

Q. Do you mean by that you were not in any better position?

A. I did not consider it any better position than the other place, in the absence of assistance.

Q. What was the condition of the weather from the time the “Santa Clara” had a line taken aboard her from the “Roanoke” until the tug “Sea Rover” picked you up at Port Harford?

A. From the time the “Santa Clara” gave us the tow?

Q. What was the condition of the weather after you were picked up and towed by the “Santa Clara” until the “Sea Rover” picked you up—what was the condition of the weather?

A. Very thick fog, light wester swell and very light northwest wind and mostly calm up to the time we came to Port San Luis, and after about 9 o’clock in the forenoon a breeze came up from the northwest considerably stronger and then the “Sea Rover” took us in tow.

Q. In other words, there was a much stiffer breeze at the time the “Santa Clara” let go of you than there was at Point Arguello?

A. We had a moderate breeze.

(Testimony of Richard Dickson.)

Q. Was it a stiffer breeze than the one you had at Point Arguello? A. There was none at all.

Q. No wind at all at Point Arguello?

A. No, sir.

Q. You said the "Roanoke" was not in any particular danger at Point Arguello as long as her anchor chain held. Do you know what the prevailing winds are off Point Arguello along that section of the coast during the month of April?

A. We expect along that part of the coast to have the prevailing winds from the northwest at that time of the [58—26] year.

Q. If the winds are northwest and the vessel is bound north from Los Angeles, what would be the tendency of the wind if the vessel was on her course?

A. To put her further offshore.

Q. In other words, the prevailing winds along that section of the coast below Point Arguello have a tendency to blow the vessel offshore?

A. Further offshore.

Q. And in your opinion, then, that accounts for the fact there was no strain on the anchor chain of the "Roanoke" while off Point Arguello?

Mr. WALL.—Objected to as not proper cross-examination, the captain said there was no wind.

The COURT.—He said that in answer to your question.

Mr. WALL.—What do you want him to say?

The COURT.—Do you want to contradict the captain, and make him wish there was no calm there?

(Testimony of Richard Dickson.)

Mr. SOOY.—I do not want to contradict the witness at all.

The COURT.—He has already said it was calm.

Mr. SOOY.—Q. Was the glass at any time of the barometer falling after the anchorage?

A. The barometer was at a standstill; to the best of my recollection it read 29.88; I am not positive of that.

Q. Was there any indication of a storm brewing at all? A. No, sir, there was not.

Q. Were there any indications of a storm brewing at any time from the time you were picked up by the “Santa Clara” until the “Santa Clara” dropped you off Port Harford? [59—27]

A. There was not except that thick fog.

Q. What were the indications as to the weather, Captain?

A. The indication was good; good weather, that is, as well as I could see it according to the glass.

Redirect Examination.

Mr. WALL.—Q. Captain, counsel in one of his questions asked you if you permitted her to drift after the tail shaft was broken. You did not permit her to drift, did you?

A. She drifted into 15 fathoms.

Q. You could not keep her from drifting, could you?

A. I could not keep her from drifting; I wanted to get in as close as I could to get a better anchorage.

Q. You could not keep her from drifting?

A. I could not keep her from drifting.

(Testimony of Richard Dickson.)

Q. After the "Sea Rover" took you in tow where did the "Sea Rover" take you to?

A. San Francisco.

Q. When you were anchored at Port Harford you were 52 miles nearer San Francisco than when you were anchored at Point Arguello, were you not?

A. That is it.

Q. How long did it take you to come from Point Arguello to Port Harford?

A. We started from Point Arguello about half past five that evening of the 10th and we got in Port Harford, we dropped the anchor somewhere around between five and six in the morning, but we were cruising around Port Harford waiting for daylight on account of the fog.

Q. Then the "Santa Clara" got off Port Harford in the neighborhood of 4 o'clock that morning and cruised backwards and forwards until then?

A. Yes, sir.

Q. How was it when the "Sea Rover" came?

A. It was clear [60—28] when the "Sea Rover" came to us.

Q. You knew the "Sea Rover" was coming?

A. We knew that the "Sea Rover" was coming.

Q. How did you know?

A. By telegraph from San Francisco.

Q. From whom? A. From the office.

Q. From the office of the North Pacific Steamship Company? A. Yes, sir.

Q. From President Doe of the company?

A. Yes, sir, from the office somewhere.

(Testimony of Richard Dickson.)

Q. Did you have any passengers for Port Harford? A. We had not.

Recross-examination.

Mr. SOOY.—Q. Did you take any passengers off of the “Roanoke” and put them aboard the “Santa Clara” before you were picked up by the tug?

Mr. WALL.—He answered that once.

The COURT.—No.

Mr. SOOY.—Q. Did the passengers remain on board the “Roanoke” until she arrived in San Francisco, Captain? A. Every one.

Q. You say you could not prevent the “Roanoke” drifting inshore when you found the tail shaft was broken. Did you make any attempt to stop her drifting?

A. I did not. I wanted her to drift.

Q. When you discovered the tail shaft was broken if you had put out both of your anchors you could have held her? A. Yes, sir.

Q. The reason why you let her drift was to get her out of the pathway of vessels passing up and down and also to get her [61—29] in a little shallower water?

A. I considered that 17 or 18 fathoms was too much; I wanted to get into shallower water and I could without any danger.

Mr. WALL.—Q. Where did the “Sea Rover” leave you when she brought you to San Francisco?

A. Pier 13.

Q. In a position of safety?

A. She left us fast to the wharf.

[**Testimony of G. M. Jessen, for Libelants.**]

G. M. JESSEN, called for the libelants, sworn.

Mr. WALL.—Q. You were captain of the “Santa Clara” at the time she picked up the “Roanoke” on the 10th of April of this year? A. Yes, sir.

Q. You were subpoenaed to bring with you the shipping articles, the written contract between the crew of the “Santa Clara” and that vessel?

A. Yes, sir.

Q. The crew do not sign any shipping articles?

A. No, sir.

Q. The crew do not sign any written contract?

A. No, sir.

Q. How do you get your crew?

A. Pick them up out of the saloons, anywhere we can get them.

Q. You pick them out of the saloons and get them anywhere? A. Yes, sir.

Q. You take them aboard and do not make any contract with them?

A. No, sir; they are supposed to be sailors when they come to us.

Q. You do not know of your own personal knowledge of the persons who were aboard your ship on this voyage as a crew, is that correct?

A. The names of them?

Q. Yes, and who they were?

A. I knew nothing. [62—30]

Q. Did you have any conversation with any of them as to the terms or conditions under which they shipped?

(Testimony of G. M. Jessen.)

A. I did not; I never saw them at all. The purser attends to that; he has the pay-rolls; that is all I know about it.

Q. Have you got that subpoena with you, Captain? A. I have.

Q. Have you got the official log-book with you?

A. Yes, sir, it is right there.

Q. You say you do not have anything to do with the pay-roll? A. No, sir.

Q. That is what is called the ship's log of the "Santa Clara," is it not? A. Yes, sir.

Q. On this particular voyage? A. Yes, sir.

Q. Will you turn to the log-book under date of April 10th? A. Yes, sir.

Q. I will ask you to read into the record two of the entries of the log-book of the "Santa Clara" of that date.

Mr. SOOY.—We will object to the reading of the log-book unless it is offered, and before it is offered we want to make an objection to it.

Mr. WALL.—I will offer these entries; that is all I am concerned with.

The COURT.—What is your objection?

Mr. SOOY.—We object to it as being incompetent, irrelevant and immaterial.

The COURT.—There is nothing in that that you cannot develop from the testimony of the captain himself. The fact that he had made an entry of it might serve to freshen his memory.

Mr. WALL.—Q. Captain, I show you Libelants' Exhibit No. [63—31] 5, which purports to be a

(Testimony of G. M. Jessen.)

wireless message from the master of the "Roanoke" to you, and ask you if you received such a message?

A. Yes, sir.

Q. I show you Libelants' Exhibit No. 8, which purports to be a wireless message from Dickson, master of the "Roanoke," to you, and ask you if you received that message? A. Yes, sir.

Q. I show you Libelants' Exhibit No. 9, which also purports to be a wireless message to you from Dickson, and ask you if you got that message?

A. I did.

Q. I show you Libelants' Exhibit No. 10, which purports to be a wireless message from Dickson to you, and ask you if you got that message?

A. Yes, sir.

Q. I show you Libelants' Exhibit No. 11, and—

a. Mr. SOOY.—(Intg.) I think you have shown the witness duplicate messages here.

Mr. WALL.—If there are duplicates they will not do any harm.

Q. I show you what purports to be Libelants' Exhibit No. 11, to Dickson of the "Roanoke" from you, and ask you if you sent that message. A. Yes, sir.

Q. I show you Libelants' Exhibit No. 12, which purports to be a message from you to the master of the "Roanoke" and ask you if you sent that message? A. Yes, sir, I sent that.

Q. I show you what purports to be Libelants' Exhibit No. 13, which purports to be a message from Dickson to you, and ask you if you received that message? A. Yes, sir.

(Testimony of G. M. Jessen.)

Q. I show you Libelants' Exhibit No. 14, which purports to be to Dickson from you, and ask you if you sent that message. [64—32]

A. I do not remember if I sent that.

Q. I show you Libelants' Exhibit No. 15, which purports to be a message from Doe to you and ask you if you received that message? A. Yes, sir.

The COURT.—Who is Doe?

Mr. SOOY.—He is the President of the company and the owner of the two vessels, your Honor.

The COURT.—Is there any question about the sending and receiving of these telegrams?

Mr. SOOY.—I think not. We have any objection in there that we wanted to save. My recollection is that it is merely a formal objection.

The COURT.—I mean as to the authenticity of these.

Mr. SOOY.—We want to put in some others and I think there is no question about the sending and receiving of them.

The COURT.—It is only a matter of time, if the authenticity of these messages is conceded.

Mr. WALL.—I will not take up the time of the witness any further.

The COURT.—Proceed. Those that have been offered as exhibits I do not want to take up the time with them. I did not know if you had any others to offer.

Mr. LEVY.—There is no objection to putting in the entire correspondence between all the parties, if the authenticity of the messages can be estab-

(Testimony of G. M. Jessen.)

lished. Here are some others. I think you have seen them, Mr. Wall; you rejected them at the taking of the testimony because **you did not want them.**

Mr. WALL.—No, I have not seen them. I have no objection [65—33] to your introducing those.

Cross-examination.

Mr. SOOY.—Q. Captain Jessen, here are some Marconi wireless telegrams or wireless messages; can you identify those as having been received by you or sending them?

Mr. WALL.—Are those the ones I just looked at?

Mr. SOOY.—Yes.

A. Yes, sir.

Mr. SOOY.—I will offer these telegrams in evidence and ask they be marked Claimant's Exhibit "A."

(The telegrams are marked Claimant's Exhibit "A" and are as follows:)

[Claimant's Exhibit "A"—Telegrams.]

"MARCONI WIRELESS TELEGRAPH COMPANY OF AMERICA.

No. 3. From Santa Clara Station.

April 10, 1913.

Dickson, Roanoke.

We are full of freight and passengers. Is it absolutely necessary for me to go to your assistance.

JESSEN."

“MARCONI WIRELESS TELEGRAPH COM-
PANY OF AMERICA.

PACIFIC COAST DIVISION.

No. 4. From Santa Clara Station.

April 10, 1913.

Dickson, Roanoke.

Have orders to tow you to Port San Luis. Have
you any tow lines on board?

JESSEN.”

“MARCONI WIRELESS TELEGRAPH COM-
PANY OF AMERICA.

PACIFIC COAST DIVISION. [66—34]

No. 1. From San Francisco.

April 10, 1913.

Dickson, Roanoke.

Are you totally disabled or can you proceed
slowly? Get Jessen by wireless he will assist un-
til tug reaches you if one is necessary. Give me
full information quick.

DOE.”

“THE WESTERN UNION TELEGRAPH
COMPANY.

San Luis Obispo, Calif., April 10th, 1913.

Doe, Pier 13, San Francisco, Cal.

Do you want us to go to the assistance of Roanoke
takes five hours.

JESSEN.”

(Testimony of G. M. Jessen.)

“MARCONI WIRELESS TELEGRAPH COMPANY OF AMERICA.

PACIFIC COAST DIVISION.

Jessen, Santa Clara.

Roanoke two miles south Arguella 10 A. M.
Broken shaft help him if necessary till tug arrives.

DOE.”

Mr. SOOY.—Q. Captain Jessen, you were on April 10th the captain of the “Santa Clara” and received various wireless messages? A. Yes, sir.

Q. And sent some, did you not? A. Yes, sir.

Q. From whom did you receive the first message with reference to the “Roanoke” on that day?

A. From Captain Dickson.

Q. The captain of the “Roanoke”?

A. Yes, sir.

Q. And after you received that message notifying you of the [67—35] breaking of the tail shaft what message then did you send?

A. I have them here. This is the way it happened, the whole thing; I have them here in my pocket. That is just the way they came and the way they were sent. (Handing.)

Q. The first message you got, “Come to our assistance lost wheel two miles south Point Arguello”?

A. Yes, sir, then I got this (pointing).

Q. Then you replied to that “Your message received coming to your assistance”? A. Yes, sir.

Q. Before you sent a reply to that did you send any message to Mr. Doe or to the North Pacific Steamship Company? A. No, sir.

(Testimony of G. M. Jessen.)

Q. In other words, did you decide to go to the assistance of the "Roanoke" before you had permission from the owner?

A. I did,—I was going there. I did not know whether he had a telegram from Mr. Doe; I supposed they had, so I said I will come to your assistance because I did not know whether it was absolutely necessary or not, but I had already telegraphed to him that I started, which I did.

Q. Didn't you wire to Mr. Doe, the owner of these two vessels?

A. I did, if you keep on you will get right to it.

Q. Then after sending this message that you were coming to the assistance of Captain Dickson you received an answer from Dickson "when do you expect to arrive here"? A. Yes, sir.

Q. And you replied, "Expect to arrive in five hours off Point Buchon"? A. Yes, sir.

Q. When did you send the next message?

A. This one.

Q. This is to Charles P. Doe, "Do you want us to go to the [68—36] assistance of Roanoke, takes five hours?" A. Yes, sir.

Q. Then did you receive any reply from Mr. Doe?

A. This one.

Q. "Roanoke" two miles south Arguello ten A. M. reports broken shaft; help him if necessary till tug arrives"? A. Yes, sir.

Q. That would be on the 10th? A. Yes, sir.

Q. Then here is another telegram that you sent to Dickson of the "Roanoke": "We are full of freight

(Testimony of G. M. Jessen.)

and passengers is it absolutely necessary for us to go to your assistance"? A. Yes, sir.

Q. You sent that? A. Yes, sir.

Q. That was sent at 12:05 A. M. That was an hour after you notified Captain Dickson that you were coming? A. Yes, sir.

Q. Now, the next one. "We need your assistance at once, Dickson"? A. Yes, sir.

Q. That was 12:07 in reply to yours?

A. Yes, sir. That is, I got orders to keep on going south.

Q. This is a telegram from you to Sullivan?

A. That is the agent at Port San Luis. "Unless I get orders will keep on going south."

Q. What did you mean by that?

A. I did not think he was in a bad place, I knew the place; so I was going to go right on to him until the tug came.

Q. Unless you got orders from whom?

A. Yes, sir.

Q. Who? A. Mr. Doe.

Q. That is, if Mr. Doe had not ordered you to go to the "Roanoke" to give her whatever assistance she might require you would not have gone at all?

A. No, sir. [69—37]

Q. Here is a telegram from Mr. Doe to Captain Jessen, "Bring Roanoke to port San Luis tug leaving San Francisco to tow her in"? A. Yes, sir.

Q. What time did you expect to arrive at the "Roanoke"?

A. I said in the morning—I could not tell.

(Testimony of G. M. Jessen.)

Q. After you sent the wire to Dickson that you would come to him immediately and it would take you five hours you evidently changed your mind, did you, Captain?

Mr. WALL.—Objected to as not proper cross-examination and as leading and trying to put in his own witness' mouth something that is self-serving.

The COURT.—Are these the telegrams you have just been identifying?

Mr. WALL.—Yes.

The COURT.—Were they already in evidence?

Mr. WALL.—No.

Mr. SOOY.—I am cross-examining the witness in reference to the telegrams which Mr. Wall has asked him on direct examination. I have a right to lead the witness on cross-examination. I am asking him whether or not he did not change his mind.

The COURT.—The objection is overruled.

Mr. SOOY.—Q. How do you account for the fact that you sent those two different kinds of telegrams?

A. Which two?

Q. You sent to Captain Dickson "I will be there in five hours?" A. Yes, sir.

Q. And in the other telegram to Sullivan you said you were going on south if he did not need assistance?

A. I had a telegram from Mr. Doe about that saying to go [70—38] and bring him to Port San Luis.

Q. You were waiting then for a telegram from Mr. Doe before you started to the aid of the "Roan-

(Testimony of G. M. Jessen.)

oke''? A. Yes, sir.

Q. Had you not gotten that order you would not have gone to the "Roanoke"? A. I would not.

Mr. WALL.—Q. How far were you from Port San Luis when you got the first message from Captain Dickson? A. About 10 miles.

Q. Did you keep on towards Port San Luis when you got the message?

A. When I got the message I hauled her out one and a half points, approximately, until I got further orders.

Q. That is, you were heading in what direction when you got the message?

A. It would be about south southeast, maybe southeast $\frac{3}{4}$ ths east or $\frac{5}{8}$ ths east.

Q. Then, you hauled her out to seaward about how much after you got the message?

A. I went right straight for Arguello. I do not remember now. I do not remember how many points on the compass.

Q. What I am trying to get at was this. When you got that message you were heading for Port Harford? A. Yes, sir, heading south southeast.

Q. After you got the message you changed your course so as to head for Point Arguello?

A. Yes, sir.

Q. Immediately after getting the message?

A. Yes, sir.

Q. And continued on that course until you made the "Roanoke"?

A. As soon as I got off Port San Luis, the differ-

(Testimony of G. M. Jessen.)

ence was so little in 10 miles it did not amount to much. I kept a going until I got the telegram.
[71—39]

Q. When you got the message you were heading for Port Harford, and after you got the message you changed your course so as to head for Point Arguello and kept on that course until you made the "Roanoke"?

A. Yes, sir, that is true; I made no change until I got the message from Mr. Doe.

Mr. SOOY.—Q. Did you, as a matter of fact change your course any?

Mr. WALL.—He just said he did.

A. I was here at Point Buchon this way (illustrating), and then when I got that message I hauled up this way, that is a little bit out.

Q. Don't you keep right on your course if you are going down the coast—don't you keep on your course? As a matter of fact, in going down the coast don't you keep on your course?

Mr. WALL.—He testified he changed his course.

A. From that point to this point, that is south by east $\frac{3}{4}$ ths east.

Mr. SOOY.—Q. Don't you keep right on that course?

A. After I start from here? When I got word from Mr. Doe I went there (pointing).

Q. Instead of turning here into Port San Luis you kept right on going? A. Yes, sir.

Q. In other words, you would have to go out of your course to go to Port San Luis? A. Yes, sir.

(Testimony of G. M. Jessen.)

Q. Instead of turning you kept right on?

A. Yes, sir.

Q. That is as I understand it? A. Yes, sir.

Q. That is right in the track of vessels going from San Francisco to San Pedro?

A. Yes, sir. That time of the year it is not smooth. [72—40]

Mr. WALL.—Q. When you got the message, Captain, you were heading on some course, weren't you?

A. Yes, sir.

Q. After you got the message you changed your course somewhat to the right, to seaward?

A. Yes, sir.

Q. And you continued on that course, the new course until you made the "Roanoke"?

A. Yes, sir.

Mr. WALL.—That is all.

Further Cross-examination.

Mr. SOOY.—Q. Tell me where you were on this map when you changed your course. A. Where?

Q. Yes.

A. At Point Buchon; I kept going until about off about like there (pointing). I do not exactly know where I hauled her out.

The COURT.—Q. Where were you heading for when you received the message?

A. In there. I was going in here, in Port Harford (pointing).

Mr. SOOY.—Q. Instead of going into Port Harford what did you do?

(Testimony of G. M. Jessen.)

A. I kept for this point because Dickson was laying there with the "Roanoke."

Q. That is where the "Roanoke" lay?

A. Yes, sir.

Q. How far were you from Point Buchon when you received the first message?

A. I was just making the point, making the point there about a mile. I may have been past it a little, I do not know.

Q. Now, then, Captain, if you are one mile out from Point Buchon if you were going to Port San Luis are you on the regular course to Point Arguello? Let me make it a little plainer.

The COURT.—You are evidently not heading to Point Arguello.

A. I am heading up this way. [73—41]

Mr. SOOY.—Q. I understand. I am asking you—

Mr. WALL.—I want to put in an objection so ask your question fully.

Mr. SOOY.—Q. Captain, if you are bound from Point Buchon to Port San Luis and you are one mile from Point Buchon on your regular run would not Port San Luis be on the regular track to Point Arguello when you are a mile north of Buchon?

Mr. WALL.—Objected to as not proper cross-examination. The captain has gone fully into this matter and has answered that question a number of times.

Mr. SOOY.—Q. If you are bound on your regular run from Point Buchon to Port San Luis and you

(Testimony of G. M. Jessen.)

are one mile from Point Buchon are you then on the regular course to Point Arguello. That is, if you are right here and are bound for Port San Luis would you not be on the regular course to Point Arguello? A. Yes, sir. Instead of going here—

Mr. WALL.—Finish your answer.

Mr. SOOY.—I have asked the witness just to answer the question.

The COURT.—He has answered it.

Mr. WALL.—Q. Instead of going here what else were you going to say?

The COURT.—The whole matter is taking up time. The witness has said that whatever course he was on he changed it to go to Point Arguello. You are trying to say it was not necessary; it does not mean any more, does it?

Mr. SOOY.—I think your Honor does not do me justice. I am not attempting to confuse this witness.
[74—42]

The COURT.—I do not say that.

Mr. SOOY.—The point is, as a matter of fact, he was on this course, right on that course and he was heading for Point Arguello without making any change at all; if he had kept on the course he was on when a mile from Buchon he would have hit Point Arguello, but he had to change his course to get in here.

The COURT.—That is not what he said.

Mr. SOOY.—I know. What I am talking about is the way counsel put his questions has confused the witness.

(Testimony of G. M. Jessen.)

Q. If you were a mile from Point Buchon—

The COURT.—It is not a question of what he used to do, it is a question of what he did.

Mr. SOOY.—He had to keep off the track.

The COURT.—The question was asked the witness this way: He was asked when you received that message you were heading on some course and he said I was. He was asked, you changed that course to go to Point Arguello and he answered he did. He was then asked, you did not change that course again until you made Point Arguello and he said no; that is what occurred.

Mr. SOOY.—The fact is he did not change his course.

The COURT.—If that be true the captain has not told the truth.

Mr. SOOY.—The captain does not understand the question.

The COURT.—I think the captain is intelligent enough to know.

Mr. SOOY.—Q. Which way is north, Captain?

A. This way (pointing). [75—43]

Q. Where is Point Buchon?

A. Here (pointing).

Q. That is Point Arguello (pointing)?

A. Buchon is here. That is Arguello (pointing).

Q. You were bound from Point Buchon to San Luis? A. Yes, sir.

Q. When you get a mile south of Point Buchon what course are you on. Right there, is that a mile where I marked that with a pencil?

(Testimony of G. M. Jessen.)

A. Yes, sir, approximately.

Q. When you are there where are you steering for?

A. Not knowing anything about the "Roanoke"?

A. Yes. A. Southeast.

Q. Right along that way? A. Yes, sir.

Q. Then you do not steer for Point Arguello?

A. No, sir, right along here, southeast.

Mr. SOOY.—I see; I will take it all back. That is all.

Further Redirect Examination.

Mr. WALL.—Q. You say you had fog when you were off Point Buchon? A. Yes, sir.

Q. When you got the message, the first message?

A. It cleared off about that time. It was in patches; it came in thick and it cleared off at Port San Luis about 10 miles and then shut down thick again.

Q. And from the run from Buchon down to Point Arguello how was the weather as to fog?

A. The first half smooth and fine weather and then it shut down foggy, thick fog.

Q. Do I understand the last half of the trip was thick fog? A. Yes, sir.

Further Cross-examination.

Mr. SOOY.—Q. What time?

A. I think it was 4:45 or [76—44] 5:45, I am not positive.

Q. On the morning of the 10th or 11th?

A. The 10th, not the morning; it was not in the

(Testimony of G. M. Jessen.)

morning, it was in the evening when I got there.

Mr. SOOY.—That is all.

Mr. WALL.—That is the libelants' case.

[**Testimony of Richard Dickson, for Claimant.**]

RICHARD DICKSON, called for the claimant.

Mr. SOOY.—Q. Will you describe to his Honor just how the hawser was placed aboard the "Santa Clara" from the "Roanoke"? A. Yes, sir.

Mr. WALL.—I will be willing to agree to stipulate as to it.

Mr. SOOY.—I prefer to have the captain tell it, so it will be plainly understood.

A. When the "Santa Clara" arrived close to us, I would say about a mile, in that neighborhood—we seen her, we were hearing her whistle all the time, when she came close enough to us we put a boat over with our own crew, the first officer and three sailors, to the best of my recollection; or four sailors, with our own line there and they took it to the "Santa Clara." The "Santa Clara's" crew was receiving it aboard their ship and taking it aboard to make it fast. The work was done by the "Roanoke's" crew; the line belonged to the "Roanoke"; everything belonged to us. On arrival in Port San Luis it was also let go by the crew, dumped overboard and we hove it in on the "Roanoke." [77—45]

Q. In other words, the "Roanoke's" lines and the "Roanoke's" men and the "Roanoke's" crew—

The COURT.—Are you doing this for the benefit of the Court?

(Testimony of Richard Dickson.)

Mr. SOOY.—No.

Q. What did the crew of the “Santa Clara” have to do with the passing over of the lines to the “Santa Clara”?

A. Nothing except letting go and making them fast.

Q. Except making the lines fast on the “Santa Clara”?

A. Yes, sir.

The COURT.—That is just exactly what he said before.

Mr. SOOY.—I think not.

The COURT.—Not at all. He said when the “Santa Clara” came up the “Roanoke” put a boat over and brought the line to them and the only thing they did was to make it fast and let go of it at Port Harford.

Mr. WALL.—And that is what he said in his testimony taken before the Commissioner.

Mr. SOOY.—Q. You have testified there was no excitement among the women and children on board. Was there any excitement on board the vessel after she was dropped by the “Santa Clara” off Port San Luis or Port Harford?

A. No, sir.

Q. There was not?

A. No, sir.

Q. What was the position of the “Roanoke” with relation to the Pacific Ocean?

The COURT.—What time?

Mr. SOOY.—Q. When she was anchored?

A. We were heading about northwest; there was a light northwest wind and a little [78—46] cur-

(Testimony of Richard Dickson.)

rent from the northwest which kept us heading to the northwest.

Q. And stern, of course, would be to the southeast?

A. In a northwest direction; I do not say it was exactly, but in a northwest direction.

Q. And held by her starboard anchor which is on the forward end of her? A. Yes, sir.

Q. Are you familiar with the bed of the ocean, the holding ground three miles south of Point Arguello?

A. I had experience at that time I was anchored there with the "Roanoke."

Q. You are familiar with other anchorages in the Pacific Ocean? A. I had some experience.

Q. And you know where the bed of the ocean is considered good holding ground for anchorage and where it is not?

A. I think I do; I have had quite a little outside experience.

Q. What would you say as to the qualities of the ocean bed there for holding an anchor, what would you say they are?

A. I would consider a sand, clay and mud mixture of that composition is the best holding ground.

The COURT.—That is off Point Arguello?

Mr. SOOY.—And below Point Arguello.

The COURT.—Where the vessel was located.

Mr. SOOY.—Yes.

Q. What would you say *are* the relative merits of the ocean bed were where the "Roanoke" was anchored before she was picked up by the "Santa Clara," and after she was dropped at Port Harford,

(Testimony of Richard Dickson.)

which is the best? A. About the same.

Q. There is no difference between the two?

A. No, sir. [79—47]

Q. Did your crew of the “Roanoke” sleep regular turns after the “Roanoke” was picked up by the “Santa Clara”?

A. The watches were going on just the same.

Q. And before the “Roanoke” was picked up while she was lying at anchor did your crew sleep their regular turns, too?

A. The watch was standing just the same as when running under ordinary conditions.

Q. And did the passengers rest and sleep as they did before?

A. Just the same; they were looking around; it did not make any difference to them as when we were coming up the night before.

Q. Was there any change in the regular daily routine or nightly routine on the “Roanoke” while lying there or after the “Roanoke” was picked up by the “Santa Clara”?

A. None whatever; we were just waiting for the “Santa Clara” to come.

Q. No excitement on board. I think I asked you that question before? A. No, sir.

Q. Was there any possibility of collision with vessels that were passing up and down the coast when you were at anchor at Point Arguello?

A. We were blowing our signal of two blasts every one minute, which would have avoided any collision with any vessel that might come along.

(Testimony of Richard Dickson.)

Q. So there was no danger of collision with any ship passing up and down?

A. None whatever. They could hear our whistle two or three miles; it was calm.

Q. How far was the "Santa Clara" from you when she heard your whistle, if you know?

A. I received a message from the "Santa Clara," saying she [80—48] could hear our whistle, I presume in the neighborhood of about 25 minutes or one-half an hour before she arrived at our side.

Q. How far could the "Santa Clara" be away?

A. Four or five miles.

The COURT.—Do you contend that this vessel was in such condition that she was in danger of collision? I am asking counsel if it is seriously urged.

Mr. WALL.—There was an element of danger.

The COURT.—Q. She would be how far away from you if she took over 25 minutes to reach you. Four or five or six miles?

A. I presume in that neighborhood, about four or five miles. Of course, I heard her whistle a long time before she came to us.

Mr. SOOY.—Q. When the "Santa Clara" came up and saw you, how far away did she remain from the "Roanoke" while you were putting this line aboard her?

A. We had a line 125 fathoms long of 12-inch manila hawser, which was hauled on board. I would judge she was in the neighborhood of about 400 or 500 feet away from us; about 400.

Q. Was there any danger of collision after the

(Testimony of Richard Dickson.)

“Santa Clara” sighted the “Roanoke”?

A. I did not see any danger whatsoever of any collision.

Q. With the weather condition and the sea just as they were at that time you would say there was or was not any danger of collision?

A. The “Santa Clara” was handled in proper manner and there was no danger of collision whatsoever.

Cross-examination.

Mr. WALL.—Q. Did you take any specimens of the bottom [81—49] while you were anchored off Point Arguello?

A. Only what I saw on the anchor when it came up.

Q. You are familiar with the Government chart, are you not? A. I have had experience.

Q. Can you indicate anything on the Government chart in the vicinity where you anchored that indicates anything except sand in the bottom?

A. No, sir, I cannot.

Redirect Examination.

Mr. SOOY.—Q. What came up on the anchor?

A. There was a mixture of mud and sand and a little clay came up; the clay was on the chain, sticking on the chain; so that shows there was quite a little mixture.

Q. How much of the chain was covered with that sand and mud you described came up?

A. Fifteen fathoms.

Q. Fifteen fathoms?

(Testimony of Richard Dickson.)

A. It was a mixture of sand and mud and a little clay.

Q. From that how far would you say that anchor had gone down into the mud, sand and clay?

A. Not very much, but it shows it had been lying in it.

Q. You could not tell from the amount of mud on the chain how far the anchor went down into the mud? A. No, sir.

Q. From your experience there you would say it was good holding ground? A. Yes, sir.

Recross-examination.

Mr. WALL.—Q. Your experience would be based, then, on the experience you had while anchored there at that place?

A. No, sir, I have anchored a hundred times in what we call the hundred roadstead.

Q. Were you ever anchored at this place except on that particular [82—50] time? A. No, sir.

Q. Your knowledge is based on that particular time, what you noted at that particular place at that time? A. Yes, sir.

Q. And during that time you say you had no wind?

A. No, sir.

Q. Is that correct? A. Yes, sir.

[Testimony of G. M. Jessen, for Claimant.]

G. M. JESSEN, called for the claimant.

Mr. SOOY.—Q. Captain, what did your crew do out of the ordinary course of its duty after you picked up the towing hawser from the “Roanoke”

(Testimony of G. M. Jessen.)

until you let your line go?

A. Stood the regular watches.

Q. Stood the watches?

A. The regular watches, the same as always.

Q. How many men stood watches?

A. The general number of the crew.

Q. Did you have any more watches while you were towing the vessel than you do ordinarily?

A. No, sir.

Q. Was there any difference in the regular daily routine of the ship's life of the "Santa Clara" after you picked up the "Roanoke" than there was the day before, for instance?

A. No, sir, nothing; except the men on deck watching the line, seeing it would not chafe. The sailors have to look out for such things as that.

Q. The watchman did that?

A. Of course, the sailors would do that; of course, that is their regular duty to look out for such things as that.

Q. Do I understand you to say that there was not any change [83—51] in the regular duties of the ship's life at all? A. No, sir.

Q. While you were towing the vessel?

A. No, sir.

Q. Your crew slept just the same, did they not?

A. Yes, sir.

Q. Took up their watches just the same?

A. Yes, sir.

Q. Had their meals just the same? A. Yes, sir.

Q. They had no extra labors to perform?

(Testimony of G. M. Jessen.)

A. No, sir.

Q. No extra duties to perform? A. No, sir.

Q. They turned in on the hour and got up on the hour? Yes, sir.

Q. Captain Jessen, did you ever at any time receive a wireless message from the "Roanoke" stating that the steamer "Roanoke" was drifting on shore, or that the wind where said steamer "Roanoke" then was was blowing from the east towards the shore, or that the weather where said steamer "Roanoke" then was was foggy—did you ever receive a message of that kind? A. I did not.

Mr. LEVY.—May I ask the Captain one or two questions?

Mr. WALL.—I think there ought to be one counsel examining the witness, it takes up so much time.

The COURT.—Proceed.

Mr. LEVY.—Q. In regard to the allegation in the libel, Captain, that while steaming towards Point Arguello the steamer "Santa Clara" ran into a thick fog and that said fog continued to prevail until after the steamer "Roanoke" was taken in tow.

Mr. WALL.—He testified about that already.

The WITNESS.—I could not tell you now; two o'clock it [84—52] might be.

Mr. LEVY.—Q. Two o'clock in the afternoon?

A. Yes, sir, about.

Q. And you say you started for the "Roanoke" about 10 in the morning, was it?

A. No, sir, it was 11,—about that.

Q. It was an hour or an hour and a half perhaps

(Testimony of G. M. Jessen.)

after? A. Yes, sir.

Q. In regard to the allegation in the libel that when the "Santa Clara" arrived off Point Arguello the "Roanoke" was found lying at an anchor about half or three quarters of a mile from the shore. How many miles was the "Roanoke" from shore?

A. I do not know, I could not see where he was; he was in 15 fathoms, so far as I know; he had good anchorage.

Q. There was an allegation in the libel that the navigation of the "Santa Clara" was dangerous? Is that a fact, that the navigation was dangerous?

A. Not that I am aware of.

Q. Did you at any time come up at all dangerously near colliding with the "Roanoke" when you came up near to her?

A. I had to go close enough to get a line there.

Q. How many feet was that?

A. How many feet? Oh, it probably may have been 100 feet off. I got to go close enough to get a line aboard. I think it was my lookout to see she did not collide.

Q. Had you heard any signal from the "Roanoke" during the time you approached her?

A. I heard his whistle before I got to them.

Mr. SOOY.—Q. How long did it take to tow the "Roanoke" [85—53] from Point Arguello to Port San Luis?

A. We got there in the morning about 6 o'clock we were going slow.

(Testimony of G. M. Jessen.)

Q. Where did you leave the "Roanoke" in relation to Port San Luis?

A. Off the breakwater. I guess about the southeast end of the breakwater; it was foggy; I do not know exactly where.

Q. Was the "Roanoke" in any more dangerous position at Point Arguello than she would be where you left her off Port San Luis if her anchor held?

A. I do not think so.

Q. You consider one place as dangerous as the other? A. About the same between the two places.

Q. Do you consider that the "Roanoke" was in any danger when she was anchored there below Point Arguello?

A. No, sir, she was in no danger whatsoever.

Q. You have had some long experience at sea, have you not?

A. About 44 years on steamers of all kinds.

Q. You are familiar with the custom on the Pacific Coast as to one vessel rendering assistance to another vessel when both are owned by the same firm, or person, or corporation, are you not?

Mr. SOOY.—I will withdraw that question.

Q. Is there any custom on the Pacific Coast as far as you know, Captain, as to the assistance which one vessel should give another when both vessels are owned by the same owner?

Mr. WALL.—I object to that question; the law gives the rule on the question of salvage.

The COURT.—We will determine that later.

Mr. SOOY.—Q. Is there?

(Testimony of G. M. Jessen.)

A. Not that I know of.

Q. You do not know of such custom?

A. No, sir. [86—54]

Q. Can you distinguish between whether or not this was a case of towage or a case of salvage?

Mr. WALL.—I submit, if the Court please, that is objectionable because it is a question which the Court has to decide; the Court cannot substitute the Captain's judgment for its own. It would not make any difference whether he is an expert or not.

Mr. LEVY.—He testified to the general attitude of seafaring men upon occasions of this kind.

Mr. WALL.—You asked him to testify whether it is one thing or another.

The COURT.—The rule in other matters would be to state what was done.

Mr. SOOY.—I think that is the correct ruling; I quite agree with your Honor.

Mr. LEVY.—I withdraw the question.

Mr. SOOY.—Q. You have not made any claim on account of salvage or towage or either one?

A. I have not.

Q. Why not?

Mr. WALL.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—It is a question whether these men are entitled to it.

Mr. SOOY.—I want to ask the Captain one more question.

Q. Have you ever known in your experience as a seafaring man on this coast of one vessel helping an-

(Testimony of G. M. Jessen.)

other vessel where both vessels are owned by the same owner? A. Yes, sir.

Q. Do you know whether it is customary or not for one of [87—55] such vessels to hold any claim for salvage for helping a sister ship?

Mr. WALL.—The same objection, it is contrary to law. A. I do not.

Cross-examination.

Mr. WALL.—Q. The crew of the “Santa Clara” had to look out for the line of the “Roanoke” while they were towing her? A. Look out for the line?

Q. Yes, while it was made fast on your ship?

A. Look out to see it did not chaff?

Q. And watch to see it did not part?

A. It was a matter of duty.

Q. They had to watch to see it did not part?

A. I looked out for that myself, I was on deck all night.

Q. They had to be on the lookout for it?

A. I done that.

Q. And when you got to Port Harford you were about 30 or 40 miles nearer to San Francisco, were you not? A. 34 miles.

Q. And you knew the tug “Sea Rover” was coming down to take the “Roanoke”?

Mr. SOOY.—Objected to as incompetent, irrelevant and immaterial; he may or may not know.

The COURT.—It seems to be a fact.

Mr. SOOY.—I withdraw the objection.

A. Yes, sir.

(Testimony of G. M. Jessen.)

Redirect Examination.

Mr. SOOY.—Q. The crew on the “Santa Clara” were paid for its time they were towing the vessel, were they not?

Mr. WALL.—Objected to as incompetent, irrelevant and [88—56] immaterial; it does not affect the rights of the libelants in this matter.

The COURT.—The objection is overruled.

A. I guess perhaps they had some overtime getting the line aboard; that might be as anywhere else; it is the same thing whenever you work after 5 o'clock you get paid for it unless it is on watch.

Q. They were paid their regular daily wages for their service and for any overtime if they worked overtime? A. The same as anywhere else.

Q. And they were paid? A. I expect they were.

Q. You say you looked out for the line?

A. I was all night on deck there.

Q. Did you have to change it at any time during the night? A. No, sir.

Q. Do you know whether or not there was ever any objection made by any of the crew as to the amount they received for that voyage?

Mr. WALL.—Objected to as incompetent, irrelevant and immaterial; it cannot possibly affect the libelants.

The COURT.—They are not suing their ship for wages. The objection is sustained.

Mr. SOOY.—That is all.

[**Testimony of G. M. Jessen, for Claimant (Recalled).**]

G. M. JESSEN, recalled.

Mr. SOOY.—Q. Your run on the “Santa Clara” is between San Pedro and San Francisco?

A. Yes, sir. [89—57]

[**Testimony of Richard Dickson, for Claimant (Recalled).**]

RICHARD DICKSON, recalled.

Mr. SOOY.—Q. Your run at the time the tail shaft was broken on the “Roanoke” was from San Pedro to San Francisco? A. Yes, sir.

[**Testimony of Charles P. Doe, for Claimant.**]

CHARLES P. DOE called for the claimant, sworn.

Mr. SOOY.—Q. You are president of the Northern Pacific Steamship Company, a California corporation? A. Yes, sir.

Q. The owner of the S. S. “Roanoke” and the S. S. “Santa Clara”? A. Yes, sir.

Q. Those vessels ply between San Francisco and San Pedro, do they not? A. Yes, sir.

Q. And they are both domestic vessels registered here, are they not? A. Yes, sir.

Q. You have testified in regard to these wireless messages received and sent by you, and they are substantially correct, are they not? A. Yes, sir.

Q. You did receive a message from Captain Jessen of the “Santa Clara” asking for instructions in regard to whether he should go to the assistance of the

(Testimony of Charles P. Doe.)

“Roanoke”? A. I did.

Q. And you ordered him to proceed to the assistance of the “Roanoke”?

A. Yes, sir, to bring her up to Port San Luis.

Q. How long have you been engaged in shipping on the Pacific Coast? A. Over 20 years.

Q. And the North Pacific Steamship Company has some eight vessels that regularly ply in the waters of the Pacific?

A. We did have eight; one short now. [90—58]

Q. Do you know whether or not it is customary among ship owners to have one vessel render assistance to another vessel when both vessels are owned by the same firm?

Mr. WALL.—Objected to as incompetent, irrelevant and immaterial, and having no effect on the libelants in this case.

The COURT.—The objection is overruled.

Mr. SOOY.—Q. Yes, or no? A. Yes, sir.

Q. Will you tell his Honor what that custom is on the Pacific Coast?

Mr. WALL.—The same objection.

The COURT.—That may run to all this testimony; it is either or is not objectionable.

A. It is customary among ship owners that their own vessels shall assist another boat belonging to the same firm. When we have more than one vessel running on the same route we take this into consideration in the question of insurance, and the orders are that one ship shall help the sister ship. Whenever possible we have two vessels running on

(Testimony of Charles P. Doe.)

the same route and we do this for our own protection, and that is one reason why we use more than one vessel on the same run, and also for protection so that in the event one vessel needs the assistance of another she will be in that locality.

Q. What is the rule as to compensation or salvage where one vessel helps another when both vessels are owned by the same corporation?

Mr. WALL.—The same objection. That is a question to be determined by the Court.

A. I think all those cases have been determined by the Court. [91—59]

Mr. SOOY.—Q. I am asking you what the custom is in regard to compensation?

A. When both vessels are owned by the same firm?

Q. When there is no controversy, when both vessels are owned by the same person?

Mr. WALL.—The same objection.

A. Yes, sir.

Mr. SOOY.—Q. That custom that you have testified to when one vessel helps another vessel is there any compensation for the vessel when both vessels are owned by the same firm?

A. Not in ordinary towage.

Q. What can you say in the case of salvage?

A. I think the crew in salvage would have some right for compensation.

Q. In other words, the custom depends on the amount the crew receives?

A. It is a simple proposition; it is a proposition of the amount the crew is paid; sometimes it is paid

(Testimony of Charles P. Doe.)

by the company but more often by the decision of the Court.

Q. You have heard the testimony in regard to the "Roanoke," would you say that came under the custom as a case of salvage or towage?

Mr. WALL.—Objected to as calling for the conclusion of the witness, and as being a matter which the Court will have to determine.

The COURT.—The objection is sustained.

Mr. SOOY.—Q. Were the members of the crew of the "Santa Clara" paid in full for all overtime during the time they were towing the "Roanoke"?

A. Yes, sir.

Q. On April 10th and 11th?

A. They were paid everything [92—60] coming to them.

Q. Was there any objection made by any member of the crew that they were not paid the amount coming to them for what they performed during this service?

Mr. WALL.—Objected to as incompetent, irrelevant and immaterial, and as being a matter that cannot possibly affect any claim made by the libellants in this case of salvage.

The COURT.—The objection is sustained.

Cross-examination.

Mr. WALL.—Q. The "Roanoke" sometimes runs up to Seattle, does she not? A. Never.

Q. Was she run by the California & Atlantic Steamship Company? A. Before we owned her.

(Testimony of Charles P. Doe.)

Q. Is she still the same sort of vessel?

A. Yes, sir.

Q. As to the crew on board the "Santa Clara" during the time the "Roanoke" was brought up did you have anything to do with shipping them?

A. No, sir.

Q. You had nothing to do with their going aboard?

A. Only in regard to the ship's rules and regulations.

Q. You had no statement or condition that they shipped under? A. No, sir.

Q. You never told them about any custom in regard to salvage?

A. I did not, never met them personally.

Mr. SOOY.—Q. Since the North Pacific Steamship Company has owned the "Roanoke" she has not run to Seattle? A. No, sir. [93—61]

[Testimony of Richard Dickson, for Claimant (Recalled).]

RICHARD DICKSON, recalled.

Mr. SOOY.—Q. Do you know what the custom is, Captain, as to one vessel helping another vessel without compensation where both vessels are owned by the same person, or corporation on the Pacific Coast?

A. I do know a certain custom.

Mr. WALL.—I understand that is simply preliminary.

Mr. SOOY.—Now, what is the custom, Captain, where two vessels are owned by one person and one vessel is in distress and the other vessel helps it,

(Testimony of Richard Dickson.)

what is the custom as to claiming any salvage or towage?

A. I have been on ships where one has picked up the other, but I never heard of any compensation, at least I have never received any.

Q. Would you say the custom is not to make any charge or any claim for salvage for one ship against the other when both are owned by the same person?

A. Those that I have been shipping with we never get anything but our salary.

Q. Will you say it is not customary to make a charge?

Mr. WALL.—Objected to as leading.

Mr. SOOY.—Q. What would you say the custom is where one vessel helps another when both vessels are owned by the same company?

A. Since I have been on this coast, since 1881 I have heard of several cases of that kind, but I never heard of compensation except what was given by the company. [94—62]

Saturday, September 20th, 1913.

Mr. SOOY.—Your Honor, it is not quite clear in my mind that the record discloses just what time the “Sea Rover” picked up the “Roanoke” off the Port of San Luis.

The COURT.—I think it was about 11 o’clock. The hour is fixed by somebody.

Mr. WALL.—I understand the Captain of the “Sea Rover” is here and I have no objection to his testifying to that.

Mr. SOOY.—I do not care to reopen the matter or put the witness on the stand, but I have been a bit doubtful about that point and wanted to make sure of it.

The COURT.—The tug came at 11 and took us to San Francisco.

Mr. SOOY.—That is all right.

The COURT.—That is your understanding of it, Mr. Sooy, that is the hour?

Mr. SOOY.—That is my understanding, but I did not know whether the record disclosed it.

The COURT.—Yes, that is the testimony.

[Endorsed]: Filed Nov. 24, 1913. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

[95—63]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

OSKAR JOHANSEN et als.,

Libelants,

vs.

The Steamer "ROANOKE," etc.,

Respondent.

Testimony Taken Before Commissioner on Reference.

Tuesday, June 17th, 1913.

TESTIMONY TAKEN ON REFERENCE BEFORE FRANCIS KRULL, U. S. COMMISSIONER.

APPEARANCES.

F. R. WALL, Esq., for the Libelants.

C. H. SOOY, Esq., for the Respondent.

[96—1]

[Testimony of Albert H. Ginman, for Libelants.]

ALBERT H. GINMAN, called for the libelants, sworn.

Mr. WALL—Q. Just give the Reporter your name and occupation.

A. Albert H. Ginman; occupation, manager of the Pacific Coast Division of the Marconi Wireless Telegraph Company of America.

Q. And it was such on the 9th and 10th of April of this year? A. Yes, sir.

Q. Mr. Ginman, you were subpoenaed to bring with you all the messages that were exchanged between the steamer "Santa Clara" and the steamer "Roanoke" and both those vessels and C. P. Doe on the 10th day of April?

A. Yes, sir. (Handing.)

Q. These are all on the 10th are they that you have given me? A. Yes, sir.

Q. And these that you hand me, are they ar-

(Testimony of Albert H. Ginman.)

ranged in the order in which they were received by you?

A. That I could not say positively, but those are the ship's copies.

Q. I will ask you to state briefly, Mr. Ginman, what the method of operation is so far as your office is concerned in regard to receiving copies of messages that are sent by wireless between vessels.

A. Messages are received by wireless at the San Francisco station thence by telephone at the main office in the Merchant's Exchange Building and delivered from there by messenger.

Q. I have here what purports to be a bunch of messages marked in blue ink from the files of the steamship "Roanoke," and I will ask you just to state what those are.

A. These are messages that originated on board of the steamer "Roanoke" addressed to the steamer "Santa Clara" and [97—2] to San Francisco.

Mr. SOOY.—I suggest, Mr. Wall, that you mark those for identification so that we will know which ones he is talking about.

The WITNESS.—There are messages here also from San Francisco and from the steamer "Santa Clara."

Mr. SOOY.—I will object to any further testimony in reference to these messages unless they are identified. The record will not show what messages he is talking about.

Mr. WALL.—I am going to put them all in.

Mr. SOOY.—If you will only identify the mes-

(Testimony of Albert H. Ginman.)

sages that he is talking about now we will know what he is talking about.

Mr. WALL.—I will put them all in.

Mr. SOOY.—There are some of one class and some of another class; I cannot tell what they are. If you will introduce them for identification as you go along then the record will show what he is talking about.

Mr. WALL.—Q. I will ask you to produce the first message that was received at your office from the steamer “Roanoke” on the 10th day of April, 1913.

A. From the “Roanoke”?

Q. Yes. A. Can I separate these?

Q. Yes, separate them and hand them to me in their order? A. Yes, sir (handing).

Q. This is the first one; I see that there is marked in the upper part of the right-hand side of the message “time sent 11:07 A. M.” That means the time sent from where?

A. From the steamer to the San Francisco Wireless station.

Q. And sent to “DN FG,” what does that mean?

A. Those are [98—3] the operator’s signatures.

Q. You say this was the first one that was received at your office from the steamship “Roanoke” on April the 10th? A. Yes, sir.

Mr. WALL.—We will offer that in evidence as Libelant’s Exhibit No. 1.

Mr. SOOY.—Q. Did you receive this message personally? A. No, sir.

(Testimony of Albert H. Ginman.)

Q. Where did you get it?

A. From the office files.

Q. You don't know, as a matter of fact, whether it was received or not, do you? A. No, sir.

Q. Where is the man who received this message, do you know?

A. Can I see the operator's signature?

Q. Yes.

A. I believe that operator is on the steamer "Siberia."

Mr. WALL.—Q. You are in charge here of the Marconi Wireless Telegraph Company of America, are you not, Mr. Ginman? A. Yes, sir.

Q. And as such have authority over all the employees of that company here? A. Yes, sir.

Q. As manager? A. Yes, sir.

(The telegram is marked Libelants' Exhibit No. 1.)

Q. Now, what was the next message that was received from the "Roanoke"?

A. That is addressed to San Francisco, you mean?

Q. No, the next one in the order of their receipt from the "Roanoke"?

A. You are referring to messages to San Francisco and not from other steamers or ports?

Q. The next one received to San Francisco?

A. Yes, sir, this one (handing). [99—4]

Mr. WALL.—We offer this in evidence as Libelants' Exhibit No. 2.

(The telegram is marked Libelants' Exhibit No. 2.)

(Testimony of Albert H. Ginman.)

Q. The next one that was received coming to San Francisco?

A. Do you mean referring to San Francisco Wireless station controlled by the Marconi Wireless Company?

Q. Any message that was received coming to San Francisco that came under your notice?

A. I have two messages here that originated on the "Roanoke" but were not sent to the Marconi Wireless Stations.

Q. To whom were they sent?

A. One was sent to Mare Island.

Q. Let me look at that. A. Yes, sir (handing).

Q. This was the next one in the order of receipt?

A. Yes, sir.

Mr. WALL.—We will offer this in evidence as Libelants' Exhibit No. 3.

(The telegram is marked Libelants' Exhibit No. 3.)

Q. And the next one?

A. This one was received at San Luis Obispo.

Q. This is the next one in the order of time?

A. Yes, sir. It may be that that message was given by wireless to the San Luis Obispo station and from there sent by Western Union, so perhaps it would be in the possession of the Western Union files.

Mr. WALL.—We will offer that in evidence as Libelants' Exhibit No. 4.

Mr. SOOY.—I will object to that exhibit No. 4 as incompetent, irrelevant and immaterial and as not

(Testimony of Albert H. Ginman.)

coming within the issues joined here.

(The telegram is marked Libelants' Exhibit No. 4.) [100—5]

Mr. WALL.—Q. The next one that was sent out by the steamship "Roanoke" to anybody else?

A. To the steamer "Santa Clara."

Mr. SOOY.—Q. You say that was sent to the steamer "Santa Clara"?

Mr. WALL.—We will offer that in evidence as Libelants' Exhibit No. 5.

(The telegram is marked Libelants' Exhibit No. 5.)

Q. Now, give me the messages exchanged between the master of the "Roanoke" and the master of the "Santa Clara," in the order in which they were exchanged?

A. We have messages here from San Francisco to the steamer "Roanoke" that may be replies to those messages.

Q. This was sent in answer to which one?

A. That I cannot say.

Q. This was sent from your office here in San Francisco? A. Yes, sir.

Mr. WALL.—I will offer that in evidence as Libelants' Exhibit No. 6.

(The telegram is marked Libelants' Exhibit No. 6.)

Q. This was sent by your office to the "Roanoke" at what time?

A. It was received on the "Roanoke" at 12:22 P. M.

(Testimony of Albert H. Ginman.)

Mr. SOOY.—Q. That is what it discloses on its face, Mr. Ginman? A. Yes, sir.

Q. You do not know of your own knowledge when it was received there except from this record?

A. No, sir, that was the operator's endorsement at the time it was received.

Mr. WALL.—We will offer that in evidence as Libelants' Exhibit No. 7.

(The telegram is marked Libelants' Exhibit No. 7.) [101—6]

Q. And the next one that had been sent in answer to any of these? A. We have no more.

Q. Then give us now the messages exchanged between the "Roanoke" and the "Santa Clara" in the order in which they were exchanged?

A. 10:45 telegram from the "Santa Clara" to the "Roanoke."

Q. Where is the first one that originated on the "Roanoke"?

A. Here it is (handing). I have one prior to that from the "Roanoke" to the "Santa Clara" at 12:07 A. M.

Q. This is the first one sent by the "Roanoke" to the "Santa Clara"? A. Yes, sir.

Mr. WALL.—We will offer that in evidence as Libelants' Exhibit No. 8.

Mr. SOOY.—Q. You don't know anything about this of your own knowledge, do you, Mr. Ginman?

A. No, sir.

Q. You do not know as a matter of fact whether this was received, or not? A. No, sir.

(Testimony of Albert H. Ginman.)

Q. You are not an agent or general manager or have an official connection with the Marconi Wireless Telegraph Company?

Mr. WALL.—He said he was the manager.

A. Yes, sir, I am the manager.

Mr. SOOY.—Q. You do not know anything about whether this was received, or not?

A. Except that—

Q. (Intg.) Of your own knowledge I mean?

A. No, sir.

Mr. SOOY.—I object to the exhibit as incompetent, irrelevant and immaterial and no foundation laid for its introduction.

(The telegram is marked Libelants' Exhibit No. 8.)

Mr. WALL.—Q. What was the next one exchanged between the vessels after No. 8?

A. This appears to be the next [102—7] from the "Roanoke" to the "Santa Clara." One is the sent copy and the other is the received copy.

Q. Which is the sent copy and which is the received copy?

A. This is the sent copy and this is the received copy (indicating).

Q. That is, No. 5 is the sent copy and No. 9 is the received copy? A. Yes, sir.

Mr. WALL.—We will offer this in evidence as Libelants' Exhibit No. 9.

Mr. SOOY.—Q. As I understand this, Mr. Ginman, No. 5 and No. 9 are duplicates?

A. No, sir. One is the transmitted copy on board

(Testimony of Albert H. Ginman.)

the steamer "Roanoke" and the other is the received copy on board the steamer "Santa Clara."

Q. The date and other details in connection with it are the same? A. Yes, sir.

Q. It is the same message, as I understand you, but No. 5 is the copy that you held in your office at the time the messages are received and then at the time the message is sent there is another copy made?

A. No, sir, these are the files of the two steamers. The yellow form is the transmitted form originating on board the ship that transmits the message; the white is the received copy as written on the steamer where the message is received.

Q. So that No. 5 then is the message that originated aboard the vessel?

A. If that is on a yellow form, yes.

Q. Then No. 9 is the same message received?

A. Yes, sir.

(The telegram is marked Libelants' Exhibit No. 9.)

Mr. WALL.—Q. Then the next one?

A. From the steamer "Roanoke" to the "Santa Clara."

Mr. WALL.—We will offer that in evidence as Libelants' [103—8] Exhibit No. 10.

(The telegram is marked Libelants' Exhibit No. 10.)

Q. And the next one?

A. From the steamer "Santa Clara" to the "Roanoke."

Mr. WALL.—We will offer that in evidence and

(Testimony of Albert H. Ginman.)

ask that it be marked Libelants' Exhibit No. 11.

(The telegram is marked Libelants' Exhibit No. 11.)

Q. And the next one?

A. From the steamer "Santa Clara" to the "Roanoke."

Mr. WALL.—We will offer that in evidence as Libelants' Exhibit No. 12.

(The telegram is marked Libelants' Exhibit No. 12.)

Q. And the next one?

A. From the "Roanoke" to the steamer "Santa Clara."

Mr. WALL.—We will offer that in evidence as Libelants' Exhibit No. 13.

(The telegram is marked Libelants' Exhibit No. 13.)

Q. And the next one?

A. From the steamer "Santa Clara" to the "Roanoke."

Mr. WALL.—We will offer that in evidence as Libelants' Exhibit No. 14.

Mr. SOOY.—Q. Is this No. 14 from Jessen to Dickerson? A. That I don't know.

Q. It is from the captain of the "Santa Clara" to the captain of the "Roanoke"?

A. It is addressed to Dickerson and it is signed Jessen.

Mr. WALL.—We admit that this exhibit, No. 14, is from the master of the "Santa Clara" to the master of the "Roanoke."

(Testimony of Albert H. Ginman.)

(The telegram is marked Libelants' Exhibit No. 14.)

Q. And the next one?

A. This is a message from San Francisco to [104—9] to the steamer "Santa Clara" that was sent via the Mare Island Navy Station.

Mr. WALL.—We will offer this in evidence as Libelants' Exhibit No. 15.

Mr. SOOY.—Q. You have not any knowledge of whether this was received, or not?

A. That is the received copy as written by the operator.

Q. Have you any personal knowledge of whether it was received?

A. You mean whether I was there?

Q. Yes. A. No, sir.

Q. You do not know whether it was received, or not, as a matter of fact, do you?

A. It must have been received—

Q. (Intg.) Just answer the question?

A. No, sir.

Mr. SOOY.—I will object to it as incompetent, irrelevant and immaterial and no foundation laid for its introduction.

Mr. WALL.—You were going to say it must have been received, why?

Mr. SOOY.—We object to the conclusion of the witness.

Mr. WALL.—Q. Go ahead and give the answer subject to his objection?

A. It must have been received otherwise the

(Testimony of Albert H. Ginman.)

operator could not have written it unless it originated in his brain.

(The telegram is marked Libelants' Exhibit No. 15.)

Q. And the next one?

A. A message originating on the steamer "Santa Clara" addressed to Doe, San Francisco and sent via the San Luis Obispo station.

Mr. WALL.—We offer this in evidence as Libelants' Exhibit No. 16.

(The telegram is marked Libelants' Exhibit No. 16.)

Q. And the next one?

A. Message from San Francisco addressed [105—10] to the "Santa Clara" via the San Luis Obispo station.

Mr. WALL.—We will offer that in evidence as Libelants' Exhibit No. 17.

(The telegram is marked Libelants' Exhibit No. 17.)

Q. And the next one?

A. There are messages here from the files of the "Roanoke," but I think they are duplicated there; that is to say, these are transmitted copies and these are received copies.

Q. Could you run over and tell whether there are any in there that are not in here?

A. Yes, sir; there is one (handing).

Q. There are none that you have that the substance is not in there?

(Testimony of Albert H. Ginman.)

A. That is one from the "Roanoke" to the "Santa Clara" and that is the "Santa Clara's" copies of messages identically.

Q. And all those messages there are identical?

A. That I don't know unless I check them over.

Q. If there is anything that has not been introduced and that is not in what has been introduced I would like to have it? A. Yes, sir.

Mr. WALL.—We offer this in evidence as Libelants' Exhibit No. 18, being an answer to Libelants' Exhibit No. 5.

Mr. SOOY.—We will object to that statement of counsel as to that.

(The telegram is marked Libelants' Exhibit No. 18.)

Mr. WALL.—That is all.

Cross-examination.

Mr. SOOY.—Q. The typewriting on all of these messages under the printed matter "time sent" indicates what? A. The time sent from the ship.

Q. Indicates the time it was sent from the ship?

A. Yes, sir. [106—11]

Q. You don't know of your own knowledge whether they were sent at that time, do you?

A. No, sir.

Q. All you know about it is what you see on the face of the telegram or aerogram?

A. Yes, sir, exactly.

Q. You were not on board either one of these vessels at the time these messages were sent, were you?

A. No, sir.

(Testimony of Albert H. Ginman.)

Q. You were not in charge of the instrument that received them? A. No, sir.

Q. Nor any of the messages that you testified to?

A. No, sir.

Mr. SOOY.—I make a general objection to all of them.

Mr. WALL.—Q. How did they come under your observation?

A. I produced them from the official files. It is the first knowledge I had of them being received, or sent.

Q. Who has control of that file?

A. The filing clerk.

Q. Is he subject to your orders? A. Yes, sir.

Q. Everybody in your office is subject to your orders? A. Yes, sir.

Q. And you gave him orders to produce them?

A. Yes, sir.

Mr. SOOY.—We object to his testifying that these are aerograms or telegrams received and sent. We object now to all of these aerograms and telegrams introduced here upon the ground that they are incompetent, irrelevant and immaterial and that there is no foundation laid for the introduction of them by this witness.

Mr. WALL.—Mr. Doe, the President of the North Pacific Steamship Company, is present here and his testimony is to be taken, and Mr. Doe has with him here the originals and copies and has checked over all of these messages.

(Testimony of Charles P. Doe.)

Mr. SOOY.—I object to that statement of counsel as not [107—12] evidence in the case and ask that it be stricken from the record.

[Testimony of Charles P. Doe, for Libelants.]

CHARLES P. DOE, called for the libelants, sworn.

Mr. WALL.—Q. Give the Reporter your name, Mr. Doe. A. Charles P. Doe.

Q. What is your business?

A. President and general manager of the North Pacific Steamship Company.

Q. What relation does the North Pacific Steamship Company bear to the steamship “Santa Clara” and the steamship “Roanoke”?

A. It owns them both.

Q. Mr. Doe, you heard the offer of these wireless messages in evidence. Run over those that are signed Doe and see whether or not you sent those messages, either Doe or C. P. Doe.

A. Here is the first one (pointing).

Q. You sent Libelants’ Exhibit No. 6?

A. I did.

Q. Libelants’ Exhibit No. 7? A. Yes, sir.

Q. Libelants’ Exhibit No. 15? A. Yes, sir.

Q. Libelants’ Exhibit No. 17? A. Yes, sir.

Q. Now, these messages that are addressed to Doe, or C. P. Doe, will you run those over and see if you received those?

A. Libelants’ Exhibit No. 1, yes. Exhibit No. 2, yes. Exhibit No. 3, yes. Exhibit No. 4, yes. Ex-

(Testimony of Charles P. Doe.)

Exhibit No. 16, yes. Exhibit No. 17, yes.

Mr. SOOY.—Q. You received how many of those, Mr. Doe? A. I did not keep track of them.

Q. Identify all of those received by you. I have got Exhibit 1, 2, 3, 4, as received by you. Will you turn back and read his answer, Mr. Reporter? (The Reporter reads the previous [108—13] answer.) You have got Exhibit 17 as being sent and received there? A. 17 was sent.

Mr. WALL.—Q. Mr. Doe, you were subpoenaed to bring the pay-roll and the crew list of the steamer “Santa Clara.” Have you those books with you?

A. I have, yes.

Mr. WALL.—I want to show by Mr. Doe that these people were on the vessel at the time and in what capacity and at what rate of pay on the “Santa Clara” as members of the crew of that vessel on the 9th and 10th and 11th day of April, 1913.

Q. Could you read the names off and the rate of wages?

Mr. LEVY.—Mr. Doe does not know the particular libelants who were members of the crew. He just knows what names he has on that sheet of paper there. You understand that, don't you, Mr. Wall?

Mr. WALL.—Q. What is this paper that you have there, Mr. Doe?

A. The pay-roll of the steamer “Santa Clara.”

Q. And you are president of the North Pacific Steamship Company? A. Yes, sir.

Q. Oskar Johansen, what capacity does he appear

(Testimony of Charles P. Doe.)

on the pay-roll of the "Santa Clara," Mr. Doe, and for what wages?

A. He was a seaman on the deck department.

Q. What wages? A. \$50 a month.

Q. H. Meislahn? A. Also seaman, \$50.

Q. P. Cain? A. Seaman, \$50.

Q. F. G. Palmer? A. I have an F. Palmer.

Q. What is F. Palmer down there?

A. Seaman, \$50.

Q. All the seamen get \$50?

A. Yes, sir, that is the standard pay.

Q. George K. Bekker, or G. K. Bekker?

A. We have that [109—14] man all right, seaman also, \$50.

Q. Christen Christensen, or C. Christensen?

A. Also seaman at \$50.

Q. Alf Johnsen, or A. Johnsen?

A. A. Johnsen, seaman, \$50.

Q. A. C. Andersen? A. Also seaman.

Q. E. Anderson? A. Seaman.

Q. H. Andreasen? A. Seaman.

Q. A. Fraser? A. Fireman.

Q. And wages? A. \$55.

Q. All firemen are paid the same? A. Yes, sir.

Q. O. Havness? A. I have not got that name.

Q. Have you got the signature for that man?

A. Yes, sir, I have the signature.

Q. O. Hansen, what was he?

A. Deck watchman, \$50 a month.

Mr. WALL.—Note there in the record we shall ask leave to amend the libel to substitute the name of O.

(Testimony of Charles P. Doe.)

Havness to O. Hansen.

The WITNESS.—This man Hansen to whom I have just testified appears to have been discharged on the first of April, and for that reason appears upon our April pay-roll. It does not appear that he was re-employed and it does not show that he was on board the ship on the 10th of April.

Mr. SOOY.—Q. Does it appear that he was on board the vessel on the 9th?

A. He was discharged on the first of April.

Q. So that during the month of April then at any time during 1913 he was not on the vessel as far as this pay-roll shows, Mr. Doe?

A. No, sir, not after the first of April.

Mr. WALL.—Q. M. Staly?

A. It is A. Fahey. [110—15]

Q. What was he employed at?

A. He was a wiper at \$45.00.

Mr. WALL.—We shall ask leave to amend the libel to change the name of Staly to Fahey; that is my interpretation of his signature.

Mr. SOOY.—We object to that; we object to your making any statement at this time.

Mr. WALL.—I give notice now that I will ask to amend the libel in that respect.

Mr. SOOY.—I object to any testimony as to any one being aboard this vessel, unless that is the person mentioned as one of the libelants.

Mr. WALL.—Q. W. Kremer? A. Oiler, \$45.

Q. V. Matson? A. Fireman, \$55.

Q. J. Kotcharin? A. He was a watchman.

(Testimony of Charles P. Doe.)

Q. Wages? A. \$50.

Q. C. Gibson?

A. Waiter as well as watchman; watchman is his proper designation.

Q. Wages? A. \$35.

Q. A. Sjogren? A. Second officer.

Q. Wages? A. \$85.

Q. B. Frankel? A. Purser.

Q. Wages? A. \$90.

Q. K. G. Clark? A. Waiter.

Q. Wages? A. \$30.

Q. A. S. Caskey? A. Oiler.

Q. Wages? A. \$45.

Q. S. B. Nilsen? A. Oiler, \$45.

Q. George M. Reed, or G. M. Reed?

A. Second assistant engineer, \$90.

Mr. SOOY.—Q. Is he on the pay-roll, Mr. Doe?

A. Yes, sir, [111—16] at the time of the accident.

Mr. WALL.—Q. G. W. Jacobs?

A. I have a G. Jacobs.

Q. What is he?

A. Third assistant engineer, \$80.

Q. A. Disher?

A. First assistant engineer, \$100.

Q. J. E. Johnson? A. Third mate, \$70.

Q. W. E. Pitts? A. Third cook, \$45.

Q. G. Drew? A. Not Drew, but Dreid.

Q. What was his capacity and pay, Dreid, or Drew?

(Testimony of Charles P. Doe.)

Mr. LEVY.—I object to that question as not material.

Mr. WALL.—You can have all the objections at any time you want to all questions.

Mr. LEVY.—I will conduct the objections; you conduct the examination, Mr. Wall.

Mr. WALL.—I have stated for the record that it can be stipulated that any objection that counsel chooses to be made to any of the questions can be considered as having been made and can be made upon the trial of the case.

Mr. LEVY.—It takes both parties to stipulate to it. I want that objection to appear.

A. This man did not join the vessel until after the accident; this party did not join the vessel until the 16th.

Mr. LEVY.—Q. Who are you talking about?

A. Mr. Dreid.

Q. There is no Dreid.

Mr. SOOY.—Q. When did Dreid join?

Mr. WALL.—If we cannot conduct this examination in the right way we will have to have the Commissioner present here to conduct this examination.

Mr. LEVY.—I am not going to be lectured by you. I think my objections are properly made.

Mr. WALL.—We do not want any cross-examination on your [112—17] part.

Mr. LEVY.—Don't tell me what to do.

Mr. WALL.—I will have the Commissioner tell you what to do.

Q. Answer that question subject to any objection

(Testimony of Charles P. Doe.)

that the other side makes.

Mr. LEVY.—I object to the question as not comprehensible and indefinite.

Mr. WALL.—Q. Answer the question subject to the objection, Mr. Doe?

A. G. Dreid appears as a waiter for \$30.

Q. Then he appears to have been on the vessel on the 10th of April, Mr. Doe?

A. He joined on the 16th of April.

Q. Then he does not appear on the pay-roll of the vessel as having been on the 10th of April?

A. He does not.

Mr. WALL.—We do not want to get anybody on there who was not on the 10th.

Q. A. G. Clarke, or A. Clarke?

A. Wireless operator.

Q. What was his pay? A. \$40.

Q. J. Martin? A. Second cook, \$60.

Q. E. Andrews? A. Pantryman, \$50.

Q. J. Pitts? A. First cook, \$75.

Q. R. Tennant? A. Mess boy, \$35.

Q. What was the total pay-roll of the "Santa Clara" on the 10th of April the officers and crew?

Mr. SOOY.—We object to that as incompetent, irrelevant and immaterial, and as foreign to the issues here.

Mr. WALL.—Q. Go ahead, Mr. Doe, and answer the question.

A. I don't understand the question, Mr. Wall.

Q. What was the total amount of pay of the offi-

(Testimony of Charles P. Doe.)

cers and crew of the "Santa Clara" on the 10th of April, 1913?

A. Do you [113—18] mean for one day alone?

Q. The rate of pay of each officer and man when added up made what total?

A. I don't know without adding up the figures.

Q. You have the figures, have you not?

A. No, sir, we do not keep our records that way.

Q. What did the master receive? A. \$175.

Q. What did the first officer receive? A. \$100.

Q. And the chief engineer? A. \$150.

Q. And the chief steward? A. \$90.

Q. What was her complement as seamen?

A. Eight.

Q. And of firemen? A. Three.

Q. Wipers? A. Two.

Q. Oilers? A. Three.

Q. Waiters?

A. That depended upon the circumstances; we did not have always the same number.

Q. I mean on the pay-roll? A. I have five.

Q. Cooks? A. Three.

Q. Watchmen of different kinds? A. Two.

Q. Did you have anybody else on board of her as officers or crew?

A. I forget now who you asked me.

Mr. SOOY.—This is all, of course, subject to the same objection.

A. (Contg.) I have lost track, Mr. Wall, of those you have designated. The second and third officers apparently we overlooked at \$85 and \$70.

(Testimony of Charles P. Doe.)

Mr. WALL.—Q. How many assistant engineers?

A. The second and third engineers at \$90 and \$80. You did not include the two wireless operators, one at \$90, who acted as purser and the other at \$40.

Q. That comprised her complement of officers and crew?

A. That [114—19] was the ordinary crew, I presume, on board on that occasion.

Mr. WALL.—That is all.

Cross-examination.

Mr. SOOY.—Q. Mr. Doe, how many of the names mentioned that belonged to the crew were on board the vessel on April 9th, 10th and 11th; that is, how many were not there of the names you have mentioned in your direct examination. How many were not on board the vessel on the 9th, 10th and 11th. Mr. Reed, I believe, you mentioned?

A. Yes, sir, Mr. Reed was there at the time; he was discharged after this accident.

Q. After the accident?

A. Yes, sir, another man took his place.

Q. Mr. Kotcharin?

A. He was there. He took the place of a Mr. Hansen whose name is on the complaint.

Q. Now, Mr. Hansen was not on either the “Santa Clara” or the “Roanoke” on April 10th; is that right?

A. The record here shows that Mr. Hansen whose signature appears upon the document which Mr. Wall has was paid off the first day of April.

(Testimony of Charles P. Doe.)

Q. And therefore was not connected with the "Santa Clara" during the month of April, 1913?

A. As far as these records show he was not.

Mr. LEVY.—May I ask a question?

Mr. WALL.—Certainly.

Mr. LEVY.—Q. Mr. Doe, you do not know that any of these men were actually on board the "Santa Clara" during that day, do you?

A. Of my personal knowledge, no, I was not there.

Q. You are only testifying from some paper you have? A. From the records of the company, yes.

Mr. SOOY.—Q. From the pay-roll? [115—20]

Mr. WALL.—No, he said from the records of the company.

Mr. SOOY.—I can find out what records they are.

Q. Answer the question.

A. What was the question?

Q. Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. Yes, sir, from the pay-roll.

Q. Of the vessel, the "Santa Clara"?

A. Yes, sir.

Q. Now, who makes that pay-roll out, Mr. Doe?

A. The chief officers in charge of the different departments.

Q. Thereafter it is filed among the records of the North Pacific Steamship Company? A. It is.

Q. Whatever knowledge you have of who was aboard this vessel, the "Santa Clara" on April the 10th is contained in that pay-roll which you are testifying from now and from no other information?

(Testimony of Charles P. Doe.)

A. Yes, sir.

Q. That is true, is it, Mr. Doe?

A. Yes, sir, that is true.

Redirect Examination.

Mr. WALL.—Q. What are the other papers there, Mr. Doe, from which you have also testified?

A. These are a part of the pay-roll containing the names of people who were dismissed during the month.

Q. Where did they get the money to pay off these people whom you have stated were on the pay-roll?

A. From our office.

Q. From the North Pacific Steamship Company?

A. Yes, sir.

Q. Of which you are president? A. Yes, sir.

Q. And you turned that money over to whom to pay? They are paid in the office?

A. No, sir, paid on board the steamer.

Q. And you turned the money over to who?

A. Those on the regular pay-roll are paid on board the ship. These that [116—21] are on the yellow slips to which you refer are paid in the office.

Q. To whom is the money given to pay those who are paid off on the ship?

A. As a rule to the purser, but not always.

Q. And the purser goes by what in paying out the money? A. By this pay-roll.

Q. And you pay some of those off—some of those are paid off in the office according to these slips which you have referred to? A. Yes, sir.

Q. What names appear on those slips as being paid

(Testimony of Charles P. Doe.)

off in the office; B. Frankel?

A. Yes, sir, there is lots of them.

Q. Read them off, those that are on the yellow slips?

Mr. SOOY.—We object to the witness reading off anything on the yellow slips if they do not appear as any of the libelants in the libel in this case, and as being incompetent, irrelevant and immaterial; they might have been there as passengers or any other way.

Mr. WALL.—Q. Go ahead and answer the question.

A. B. Porter.

Q. And who is that countersigned by?

A. It is not countersigned. It is just the regular time check.

Q. I do not want any, Mr. Doe, that are not on the libel?

A. These are all off the libel; these are people practically all discharged prior to this case. Porter served one day.

Q. He is not on the libel?

A. No, sir, I cannot select them for you.

Mr. SOOY.—That is my objection, Mr. Wall.

The COMMISSIONER.—Just give all the names from the libel. [117—22]

Mr. WALL.—He has had that from the libel a long time ago, Mr. Commissioner. He said he testified in regard to some of these from his checks.

Q. Now, C. Gibson is one whose name is on one of the yellow slips, is it not?

(Testimony of Charles P. Doe.)

A. Yes, sir, you have my testimony of Gibson.

Q. He was paid in the office? A. Yes, sir.

Q. Who was the time check countersigned by?

A. It does not require any countersign. It is simply sent by the purser and the steward who happened to have the man in his department.

Q. And G. Reed is one, and he was paid off in the office, was he not?

A. Yes, sir, I have already testified about him.

Q. And those were the only two about whom you testified from the yellow slips there as to having been paid in the office? A. I think so.

Mr. WALL.—That is all.

[Testimony of B. Frankel, for Libelants.]

B. FRANKEL, called for the libelants, sworn.

Mr. WALL.—Q. You were on the “Santa Clara” on April the 10th? A. I was.

Q. In what capacity?

A. Purser and wireless operator.

Q. And your wages were what?

A. \$90 a month.

Q. I will show you what purports to be certain wireless messages sent and received and ask you to look those over and state what you know in regard to having either sent or received any of those messages or whether while on board of the “Santa Clara” there were any of those messages that you did not send or receive that you heard, and refer to them [118—23] by the numbers up in the upper left-hand corner here.

A. No. 1 I heard sent from the San Luis Obispo

(Testimony of B. Frankel.)

station about the steamer "Roanoke." Also No. 2—

Mr. SOOY.—Just a moment now. No. 1, what do you mean by saying you heard it sent?

Mr. WALL.—That is what I would rather not have you do until I get through with my examination. You can cross-examine him when I finish with the direct examination.

Mr. SOOY.—My point is, Mr. Commissioner, I have a right to cross-examine the witness on each one of these documents after the direct examination is finished. They are already in evidence. That is my position.

The COMMISSIONER.—It only relates to the order in which the cross-examination shall be made. I suppose each message is distinct and separate and therefore there is no particular objection, is there, Mr. Wall?

Mr. WALL.—I would rather conduct my direct examination and he can make his memoranda for cross-examination.

The COMMISSIONER.—That would be the more orderly way to have the witness testify to all the facts Mr. Wall wishes him to testify to and then you can cross-examine him.

The COMMISSIONER.—That would be the more orderly way to have the witness testify to all the facts Mr. Wall wishes him to testify to and then you can cross-examine him.

Mr. SOOY.—Then after he asks one question before he can ask any further questions I have a right to stop his direct examination and insist on my cross-

(Testimony of B. Frankel.)

examination to find out whether the witness is testifying from his own knowledge or hearsay, or whether he has any knowledge of the subject at all. One of the fundamental rules of testimony, of evidence, is that when a witness starts to talk about a document, the document must be passed to the counsel on the opposing side and he have a right to cross-examine him before [119—24] any further testimony is taken.

Mr. WALL.—These documents have all been passed to the counsel on the opposing side and thoroughly gone into, and now I am only asking this man to testify to what he knows of his own knowledge. The proper way to do is to wait until I get through.

The COMMISSIONER.—Proceed.

A. (Contg.) No. 1, I heard the station at San Luis Obispo send the message about the steamer "Roanoke."

Mr. SOOY.—I object to it on the ground that the testimony of the witness is hearsay.

The COMMISSIONER.—Let the objection be noted. Proceed with the next question.

Mr. SOOY.—If you will let me bring it out by asking the witness a few questions I might not object to this.

Mr. WALL.—I will state now that the other side can have any objections they want to any of these questions both now and upon the trial of the case.

The COMMISSIONER.—Go ahead.

A. (Contg.) No. 2, I also heard the steamer "Roanoke" send to the station at Point Arguello.

(Testimony of B. Frankel.)

Mr. SOOY.—I object to that on the ground that it is hearsay.

The COMMISSIONER.—It may be ruled by the Court that it is hearsay, but it will go in this way.

A. (Contg.) No. 3, I also heard the steamer “Roanoke” send to the station at Point Arguello.

Mr. SOOY.—The same objection.

A. (Contg.) No. 4, I know the steamer “Roanoke” sent to the station at San Luis Obispo. [120—25]

Mr. SOOY.—The same objection.

A. (Contg.) No. 5 was received by me on board the steamer “Santa Clara” from the steamer “Roanoke.” No. 6, I heard sent from Point Arguello to the captain on the steamer “Roanoke.”

Mr. SOOY.—Objected to as hearsay and not the best evidence.

A. (Contg.) No. 7, I don’t remember of hearing that message.

Mr. SOOY.—We ask that that answer go out.

Mr. WALL.—It can go out.

A. (Contg.) No. 8 was a message sent from the steamer “Santa Clara” to the steamer “Roanoke.”

Mr. SOOY.—I ask that that go out as being a conclusion of the witness as to what the message is. The message speaks for itself and further that it is hearsay.

The COMMISSIONER.—Go on.

A. (Contg.) No. 9 was sent from the steamer “Roanoke” to the steamer “Santa Clara.” It was

(Testimony of B. Frankel.)

received by myself on board the steamer "Santa Clara."

Mr. SOOY.—The same objection.

A. (Contg.) No. 10 was also sent from the steamer "Roanoke" to the steamer "Santa Clara" and received by myself.

Mr. SOOY.—Objected to upon the ground that it is not shown that the witness knows where it was sent from.

A. (Contg.) No. 11 was sent from the steamer "Santa Clara" to the captain on the steamer "Roanoke" by myself. No. 12 was sent by myself from the steamer "Santa Clara" to the captain on the steamer "Roanoke." No. 13 was received by myself on board the steamer "Santa Clara" from the steamer "Roanoke." [121—26]

Mr. SOOY.—We object to that and ask that that answer be stricken out on the ground that it is not shown that the witness can tell where the message was received from.

A. (Contg.) No. 14, this message was sent from the steamer "Santa Clara" to the steamer "Roanoke" also by myself. No. 15, was received aboard the steamer "Santa Clara" by myself from the station at Point Arguello.

Mr. SOOY.—We object to the answer and ask that that portion of it as to where the message was sent from be stricken out from the record upon the ground that it is not shown that the witness can tell, or ascertain, or have any knowledge of where it was sent from to him.

(Testimony of B. Frankel.)

A. (Contg.) No. 16 was sent from the steamer "Santa Clara" by myself to the station at San Luis Obispo. No. 17, was received from the station at San Luis Obispo by myself going to the captain of the "Santa Clara." No. 18 was sent from the steamer "Santa Clara" by myself to the captain on board the "Roanoke."

Mr. SOOY.—Now, we object to any testimony of any of the aerograms or telegrams which the witness has just testified in reference to and to those telegrams or aerograms that may have been exchanged between the two vessels, the "Santa Clara" and the "Roanoke," or that may have been exchanged between either of the vessels and any other wireless station unless it be shown that those telegrams or aerograms were received by Mr. Doe, or as in an official capacity by the North Pacific Steamship Company as tending to bind the North Pacific Steamship Company and the two vessels or an exchange of aerograms between two outside parties not connected with the suit in any way. [122—27]

The COMMISSIONER.—The objection will be noted.

Mr. WALL.—How long have you been a wireless operator? A. About three years.

Q. And during that time what vessels have you served on?

A. About one dozen. Do you want the names?

Q. What vessels have you served on?

A. The steamer "Carlos," steamer "Santa Rosa," steamer "Lansing," "Falcon," "Roanoke," "Wil-

(Testimony of B. Frankel.)

helmina," "Santa Clara." I believe that is all so far.

Q. State whether or not from your experience you have been able to learn what vessels are sending messages that you hear.

Mr. SOOY.—We object to that question as calling for the conclusion of the witness.

Mr. WALL.—I qualified him as an expert and I want his conclusions.

Mr. SOOY.—I will make the further objection—

The COMMISSIONER.—Let the question be answered and put your objection in.

Mr. SOOY.—There has been no proper foundation laid for the question.

The COMMISSIONER.—That all appears in the record. The Court will determine that when it comes to consider the evidence, I suppose.

Mr. WALL.—Q. Read the question to the witness, Mr. Reporter.

(The Reporter reads the question.)

A. There are various means of telling which station is talking. The main way is the calls of the station that is sending, also by the tune of their instrument, the wave length, and strength and operator's signature.

Mr. SOOY.—I ask that that go out as not responsive to [123—28] the question.

Mr. WALL.—Q. Anything else? A. No, sir.

Q. What port did the "Santa Clara" leave prior to the time that she went to where the "Roanoke" was?

(Testimony of B. Frankel.)

A. She left San Francisco on the 9th bound for Port Harford.

Q. Did you go direct to Port Harford?

A. No, sir.

Q. State what happened.

A. While on watch on the morning of April 10th, why, a message—

Q. (Intg.) April 10th, 1913?

A. 1913, a message was received aboard the “Santa Clara.”

Q. About what time in the morning?

A. About 10 A. M.

Q. What message was that?

A. To my remembrance the message was to Captain Jessen of the “Santa Clara.”

Mr. SOOY.—We ask that any evidence as to the contents of that message be stricken out as not the best evidence.

Mr. WALL.—Q. Did you receive that message?

A. Yes, sir.

Mr. SOOY.—The same objection.

A. (Contg.) The body of that message was “two miles south of Point Arguello lost wheel come to our assistance, signed Dickson of the ‘Roanoke.’ ”

Q. Is that message in that lot there?

A. I believe so; Exhibit No. 5 is that message.

Q. At the time that you got that first message where was the “Santa Clara” then?

A. About 18 miles north of Point Piedros Blancas.

Q. And about how far in time from Port Harford?

(Testimony of B. Frankel.)

A. About four hours, I should judge.

Q. And after the message was received what was done with the "Santa Clara"?

A. That I could not say. I was in the wireless room at the time and I could not say what was going [124—29] on on the outside.

Q. Well, how was the weather at that time?

A. The sea was smooth, but it was very foggy; a little swell coming up from the north.

Q. Did the fog increase, or decrease as you proceeded?

A. Well, at times it decreased and at times it increased.

Q. How long was it before you arrived at the "Roanoke," if you did arrive at the "Roanoke"?

A. Well, we arrived there at about 6 P. M.

Q. When you got there what was the condition of the weather as to sea?

A. It was very foggy, a swell coming up from the north and that is about all.

Q. After you got the first message state what the fact was with regard to there being other vessels in the vicinity.

A. As soon as we got a line aboard the "Roanoke"—

Q. (Intg.) When you got the first message from the "Roanoke" from that time forward state what the fact was as to there being other vessels in the vicinity.

A. In about two hours there were several other lumber schooners calling up the "Roanoke" if they

(Testimony of B. Frankel.)

could be of any assistance.

Mr. SOOY.—We ask that that go out as incompetent, irrelevant and immaterial.

Mr. WALL.—What others called up?

A. The schooners—

Mr. SOOY.—(Intg.) The same objection.

The WITNESS.—Can I answer that question?

Mr. WALL.—Q. Yes.

A. The “Willamette,” the “Norwood” and I believe the “Columbia” was around.

Mr. SOOY.—Q. Do you know whether the “Columbia” was the one?

A. I could not say, but I think I heard her calling.

Q. You are not sure of that?

A. I am not sure of that. [125—30]

Mr. WALL.—Q. State whether or not any messages were received that you heard between the “Roanoke” and the “Willamette.”

Mr. SOOY.—We object to that as incompetent, irrelevant and immaterial as to what messages may have been exchanged as between anybody and the “Roanoke” or the “Santa Clara” unless it be between the “Roanoke” and the North Pacific Steamship Company.

A. I believe there was a number of messages between the “Willamette,” “Norwood” and “Roanoke.”

Mr. WALL.—Q. What was said between the “Roanoke,” if you know? A. I—

Mr. SOOY.—(Intg.) Q. Do you know?

(Testimony of B. Frankel.)

A. I could not say positively, but I have a slight remembrance the message to the "Willamette" said, would need her assistance to stand by.

Mr. SOOY.—We object to his slight remembrance and ask that the answer of the witness be stricken from the record on the ground that the witness has no recollection in regard to what the messages were and further upon the ground that it is hearsay.

The COMMISSIONER.—It will go in and the objection will be noted.

Mr. WALL.—Q. State whether or not you saw anything of the "Willamette" after you arrived where the "Roanoke" was?

A. After we arrived at the "Roanoke" and got a line aboard, the "Willamette" showed up and seeing that we had the "Roanoke" in tow, why, she proceeded on her way.

Mr. SOOY.—We object to anything as to what the "Willamette" did and ask that it be stricken from the record as incompetent, irrelevant and immaterial and hearsay and [126—31] is the conclusion of the witness.

Mr. WALL.—Q. What was the condition of the weather while you were taking the "Roanoke" in tow?

A. Very heavy fog and swell from the north.

Q. What was the position of the "Roanoke" at the time you picked her up with reference to objects on shore?

A. I should judge about two miles south of Point

(Testimony of B. Frankel.)

Arguello, very near shore though, you could hear the breakers.

Q. And upon what did you base your judgment to be about two miles from Point Arguello?

A. From past experience.

Q. Could you hear the fog horn?

A. Very strong.

Q. At Point Arguello station? A. Yes, sir.

Q. State what your experience has been in passing that locality, that part of the coast during the month of April.

Mr. SOOY.—I object to that as incompetent, irrelevant and immaterial, as to what the experience of the witness may have been any other time off this point.

Mr. WALL.—Q. Go ahead and answer the question.

A. In answer to that question—have you reference to the weather?

Q. Yes.

A. Well, the weather around Point Arguello in the month of April is a slight northerly swell at times foggy, that is about all.

Q. How many times did you say you had been up there during the month of April?

A. I should judge about eight times.

Q. What time of day was it that the “Roanoke” was taken in tow?

A. I should judge about 6 P. M.

Q. After she was taken in tow what was done with her?

(Testimony of B. Frankel.)

A. She was taken into Port San Luis or Port Harford.

Q. What time did you turn in that night?

A. 1 A. M., I [127—32] believe, April the 11th.

Q. Had she arrived there when you turned in?

A. No, sir.

Q. How long were you steaming down to where the "Roanoke" was after the first message was received on the "Santa Clara"?

A. I should judge about seven hours, or so.

Q. How long were you on the "Santa Clara" altogether during your experience on her?

A. About six months, I believe, five or six months.

Q. And during that time you acted as purser and wireless operator? A. Yes, sir.

Q. And what was her average monthly pay-roll during the time you were on her?

A. I should judge about \$2800.00.

Mr. SOOY.—Do you know whether—

Mr. WALL.—(Intg.) That is what I object to, your cross-examining the witness during my examination.

Mr. SOOY.—What does he know about it.

Mr. WALL.—I do not want you to interrupt my examination.

Q. And you were purser on the vessel you say for six months? A. Yes, sir.

Q. During that time did you have anything to do with paying off? A. Yes, sir.

Q. You paid off the officers and crew?

A. Yes, sir.

(Testimony of B. Frankel.)

Q. You know what amounts you paid out?

A. Yes, sir.

Q. And you know that the average monthly payroll was between what figures during the time you were there?

A. Between \$2,400.00 and \$2,800.00 or \$3,000.00.

Q. You know that yourself from your experience in paying off? A. Yes, sir.

Mr. SOOY.—That is all I wanted to know.

Mr. WALL.—If you had waited you would have got it. [128—33]

Mr. SOOY.—You did not lay the foundation.

Mr. WALL.—That is where you would have the benefit of that on your cross-examination.

Mr. SOOY.—I know, but you can bring that out and shorten it.

Mr. WALL.—I say you can have any objection to the questions.

Mr. SOOY.—Against you.

Mr. WALL.—You can have any objection to any question of my examination that you want.

Mr. SOOY.—I have taken testimony out here months at a time, Mr. Wall, and I understand how to examine the witness.

Mr. WALL.—That is all.

Cross-examination.

Mr. SOOY.—Q. What vessel did you first work on when you became a Marconi wireless operator?

A. The first vessel I was on was equipped with the United Wireless on the steamer “Carlos.”

Q. Was it at the time she was owned by the J.

(Testimony of B. Frankel.)

Homer Fritch Company? A. Yes, sir.

Q. Was Captain John Roberts master of her at that time? A. Yes, sir.

Q. How long did you work there?

A. I believe four months.

Q. What did you quit for?

A. They transferred me to the steamer "Santa Rosa."

Q. Who transferred you?

A. The United Wireless.

Q. For what reason?

A. Well, that I could not say.

Q. Was it not the fact that it was on account of the objection of the J. Homer Fritch Company to you?

A. No, sir, the J. Homer Fritch Company were the owners for [128—34] about two months and the Olson & Mahony concern took her over.

Q. You were transferred prior to the time that the Olson & Mahony people took her over?

A. I was transferred after.

Q. After the Olson & Mahony people took her over? A. No, sir.

Q. Did you have any trouble with the J. Homer Fritch Company while you were on board the "Carlos"? A. No, sir.

Q. After you were transferred to the "Santa Rosa" how long were you on her?

A. I believe it was about a month.

Q. Were you on her at the time she went on the rocks? A. Yes, sir.

Q. Are you the man who received the messages at

(Testimony of B. Frankel.)

the time she was on the rocks? A. Yes, sir.

Q. And the man who transferred those messages?

A. Yes, sir, I did.

Q. You admit all that?

A. I do, at least if that is not hearsay or newspaper report error. The actual messages I admit of being guilty of doing so; not guilty, but being the operator.

Q. In other words, you received and sent all the messages? A. The official messages.

Q. Were there any messages sent from the "Santa Rosa" that you did not see?

A. That I could not say.

Q. Were there any other wireless operators on board? A. No, sir.

Q. Was there any one who could receive a message? A. No, sir.

Q. Then you must have received and sent all official messages? A. All official messages.

Q. Didn't you receive and send all messages from the "Santa [130—35] Rosa"? A. Yes, sir.

Q. Then you did? A. Yes, sir.

Q. When did you go from the "Santa Rosa"?

A. They transferred me to the "Lansing."

Q. How long were you on the "Lansing"?

A. I believe 28 days.

Q. What happened there?

A. I asked for relief.

Q. For what reason?

A. I objected to the boat.

Q. For what reason?

(Testimony of B. Frankel.)

A. I did not like the run she was on.

Q. What run was she on?

A. Oleum to Panama.

Q. Why didn't you like it?

A. It was a little too warm for me.

Q. Was there any objection to your services there?

A. No objections whatever.

Q. No objections whatever?

A. None whatever.

Q. None whatever, perfectly satisfactory?

A. Yes, sir.

Q. Where did you go from there?

A. From there I went on the steamer "Falcon."

Q. How long were you on board her?

A. About a month and a half, I believe.

Q. Where did she run?

A. San Francisco to Portland.

Q. Who was she owned by?

A. She was owned by the Charles Nelson Company and chartered to the American-Hawaiian Company.

Q. What did you quit her for?

A. I was transferred to the steamer "Roanoke."

Q. Who transferred you?

A. Well, I asked for a transfer.

Q. Why?

A. I was to become purser on the steamer "Roanoke" at the time.

Q. In addition to being a wireless operator?

A. Yes, sir.

Q. Are you still purser on the "Roanoke"?

(Testimony of B. Frankel.)

A. I am not. [131—36]

Q. When did you leave the "Roanoke"?

A. I relieved the regular purser at the time. He took a vacation, I think, at the time.

Q. When did you leave the "Roanoke"?

A. I left the "Roanoke" on February, 1911—I mean 1912.

Q. Is it not a fact that you were transferred from the "Falcon" to the Roanoke"?

A. I was transferred at my own request. I asked for a transfer myself.

Q. You asked for the transfer? A. Yes, sir.

Q. Then you were not transferred by the company? A. No, sir, I asked for the transfer.

Q. You asked for the transfer? A. Yes, sir.

Q. And is it not a fact that you went to the North Pacific Steamship Company and asked for a position on the "Roanoke"? A. I did.

Q. So you were not transferred?

A. I was in a way and in a way I was not.

Q. That is the fact, you went to the North Pacific Steamship Company and asked for a position, did you not? A. I did.

Q. How long did you remain on the "Roanoke"?

A. I relieved the regular purser; I believe it was a month.

Q. And then were you discharged from the "Roanoke"?

A. I don't know if I was discharged or not. The regular purser came back and I went off.

Q. Were you requested to leave by the manage-

(Testimony of B. Frankel.)

ment of the North Pacific Steamship Company?

A. I was not requested, but I seen the purser was to take his old position and it was understood that I was to go off as soon as he came back.

Q. Then what was the next vessel you worked on?

A. I was to take charge of the Marconi station in the city. [132—37] here.

Q. Take charge of what?

A. Take charge of the station at 43rd and Clement Street.

Q. What do you mean by take charge of the station?

A. I was supposed to look out for the business there.

Q. What was your business there?

A. Wireless operator.

Q. How much money did you draw there?

A. \$75, I believe.

Q. How long did you work out there?

A. Six weeks and then I asked for a transfer to the steamer "Wilhelmina."

Q. You asked for a transfer? A. Yes, sir.

Q. From that station to the "Wilhelmina"?

A. Yes, sir.

Q. How long were you on the "Wilhelmina"?

A. 10 months.

Q. What did you quit the "Wilhelmina" for?

A. I did not like the—there were various different reasons.

Q. Give me all of them.

A. Well, one reason that I was taken off the "Wil-

(Testimony of B. Frankel.)

helmina" to be given the purser of the "Hilonian." It was not given to me and it made me kind of sore at the time.

Q. Kind of angry you mean?

A. Yes sir, then I went over to see Mr. Doe for a position in his company and I agreed to go out on the steamer "Santa Clara."

Q. Is it not a fact that you had trouble with the company? A. No, sir.

Q. Nothing at all? A. No, sir.

Q. No trouble with them? A. No, sir.

Q. No trouble in regard to finances?

A. No, sir.

Q. Nothing of that kind? A. No, sir.

Q. The only reason you quit them at all was that you had some difficulty with another purser?

A. No, sir, I was to be given the preference of a position on another ship, which [133—32] was not given to me and I did not think that was right and I wanted to get out of the Matson Navigation Company for that reason.

Q. Where were you born? A. San Francisco.

Q. How old are you? A. 23.

Q. Are you a married man? A. Single.

Q. You are 23 years old? A. Yes, sir.

Q. Where were you educated?

A. San Francisco.

Q. By public school? A. Yes, sir.

Q. What school did you go to?

A. Horace Mann Grammar and Polytechnic.

Q. Your people live here in San Francisco?

(Testimony of B. Frankel.)

A. No, sir, my mother is in the country.

Q. Your father lives here? A. Yes, sir.

Q. What did you do prior to the time you became a wireless operator?

A. I was going partly to school and partly working for Lipman Brothers at the time.

Q. How do you spell your name?

A. F-r-a-n-k-e-l.

Q. Now, how long had you been on the "Santa Clara" up to April the 10th?

A. From December, 1912, to April, 1913.

Q. You were also purser on the "Santa Clara," were you? A. Yes, sir.

Q. On April 10th you say you got a message, received a message as wireless operator on board the "Santa Clara" stating that the wheel on the "Roanoke" was broken just off Point Arguello. Is that so? A. Yes, sir.

Q. That was about 10 o'clock in the morning?

A. Yes, sir.

Q. What did the ship do immediately upon receipt of this message? A. That I could not say.

Q. What became of the ship, where did she go from that time? [134—39]

A. That I could not say.

Q. You could not remember at all what she did?

A. Well, I was in my room.

Q. You could not tell from being in your room whether the ship turned about or went on down to Port Harford?

A. She went right on straight south.

(Testimony of B. Frankel.)

Q. She went right on straight south?

A. Yes, sir.

Q. Kept right on her way? A. Yes, sir.

Q. Where were you at the time of receiving the first message?

A. About 18 miles north of Piedras Blancas.

Q. About 18 miles? A. Yes, sir.

Q. Where was the "Roanoke" as to her position?

A. She reported two miles south of Point Arguello.

Q. How far away, how far south was the "Roanoke" from the "Santa Clara" at the time of the receipt of that message? A. That I could not say.

Q. Approximately how far?

A. Well, about 38 miles, I should say; 40.

Q. About 35 or 40 miles? A. Yes, sir.

Q. You are acquainted with the coast, are you not?

A. Yes, sir.

Q. Then you say that the "Santa Clara" kept right on her course to Port Harford?

A. No, sir, she did not stop at Port Harford, she went straight down to the "Roanoke."

Q. She went straight down to the "Roanoke" and did not stop at Port Harford? A. Yes, sir.

Q. How many knots does the "Santa Clara" make down the coast?

A. It all depends upon the weather; an average of 9 knots.

Q. On April 10th what could she make?

A. About 9 knots.

Q. You say there was a stiff northerly wind blowing that [135—40] day?

(Testimony of B. Frankel.)

A. No, sir, a swell gradually coming up.

Q. Did the wind help her much on her way down?

A. No, sir.

Q. There was not enough wind so that it made much difference in her speed?

A. Not the speed, no.

Q. You were from 10 o'clock until 6 o'clock—you were from 10 o'clock that morning until 6 o'clock that evening before you got down to the "Roanoke"? A. Yes, sir.

Q. Is that a fact? A. Yes, sir.

Q. And all these messages you sent and received you sent and received between 10 o'clock in the morning and 6 o'clock that night? A. Yes, sir.

Q. Did you leave your room at all during that time?

A. I had the regular operator relieve me while I went down for my dinner.

Q. He was the regular operator?

A. I was supposed to be in charge of the wireless and the other operator was just my partner.

Q. You had him relieve you when you went down to dinner? A. Yes, sir.

Q. What time was that about? A. About 6.

Q. Did he send or receive those messages you testified to? A. He received one.

Q. Which one was that?

A. "Exhibit No. 17."

Q. Let me see it. A. Yes, sir (handing).

Q. Now, were you present at the time this message was received? A. I was.

(Testimony of B. Frankel.)

Q. And he received that while you were standing right there? A. Yes, sir.

Q. Did he receive any message at all while you were out of the room? A. No, sir.

Q. Then all the messages that were received and sent from [136—41] 10 o'clock in the morning until 6 o'clock that night were received and sent while you were in the room? A. Yes, sir.

Q. In the wireless room? A. Yes, sir.

Q. What time did you have dinner?

A. About 5 o'clock dinner was served, but I did not go down to eat then.

Q. What time did you go down to eat?

A. I went down after 6 P. M.

Q. What time after 6 P. M.?

A. About 6:15, I should judge.

Q. About how long did you remain at dinner?

A. About 10 minutes.

Q. Not any longer than that? A. No, sir.

Q. So that you got back to the wireless room about 6:30 P. M.?

A. Yes, sir, I did not want to leave the other wireless operator on watch because I did not think he was competent.

Q. He had not had experience enough in your opinion?

A. He had a Government license.

Q. He was purely a theoretical man, was he?

A. Yes, sir.

Q. What was his name? A. K. G. Clark.

Q. Is he one of the libelants here in this suit?

(Testimony of B. Frankel.)

A. Yes, sir.

Q. You say he did not receive any of these messages while you were present in the Marconi Wireless room—

A. (Intg.) Outside of Exhibit No. 17 there.

Q. (Contg.) —with the exception of Exhibit No. 17? A. Yes, sir.

Q. And that was received while you were in his presence?

A. That was received while I was in the room.

Q. When did you first sight the “Roanoke”?

A. About 5:30.

Q. How far were you from her when you saw her?

A. About 500 feet. [137—42]

Q. Didn't you see her before that? A. No, sir.

Q. Were you on the lookout for her at all?

A. No, sir.

Q. Was that the first time you came out of the wireless room?

A. We were just backing around, so through the rear windows of the wireless room from there I could see the “Roanoke.”

Q. That was the first you saw of her, when you got 500 feet from her? A. Yes, sir.

Q. Did the “Roanoke” put off a boat at that time?

A. She did.

A. How many men were in the boat?

A. Three.

Q. Did they ship that boat the first time they tried it?

A. I could not say; the boat was in the water the

(Testimony of B. Frankel.)

first time I seen her.

Mr. WALL.—We object to this as not proper cross-examination, and as having nothing to do with the direct examination in chief; we have no objection if they want to make him their own witness on cross-examination.

Mr. SOOY.—Q. You did not see this life-boat, or what was it, a work boat, was it not, of the “Roanoke”?

A. I don’t know. I just seen some boat from the window.

Q. An ordinary-sized boat?

A. Yes, sir, I believe so.

Q. How many men did it take to man her?

A. Two seamen and the first officer in her.

Q. You don’t know whether they had any trouble shipping this boat, or not, do you? A. No, sir.

Q. Did these men in this boat have any small lines?

Mr. WALL.—Can we have the same objection to all this testimony?

Mr. SOOY.—Yes.

A. I believe they had a small line running aboard; at least [138—43] it was dropped from the “Roanoke” to the small boat.

Q. Do you know whether they took that and boarded the “Roanoke,” or not?

A. I believe they left the “Roanoke” and boarded the “Santa Clara.”

Q. Do you know whether they had any trouble in boarding the “Santa Clara,” or not?

A. No, sir, I do not.

(Testimony of B. Frankel.)

Q. You don't know anything about it?

A. No, sir.

Q. What was the condition of the weather there at that time? A. Very foggy.

Q. Very foggy? A. Yes, sir.

Q. Would you say it was excessive fog?

A. Yes, sir, it was.

Q. Thick blanket of fog? A. Yes, sir, it was.

Q. How far could you see in it?

A. A quarter of a block, I should judge.

Q. Not any further than that? A. No, sir.

Q. You are quite sure of that? A. Yes, sir.

Mr. WALL.—He says a quarter of a block, he should judge. Now, you confuse the witness by asking if he is quite sure.

Mr. SOOY.—I asked him if he is quite sure of that and he says he is.

Q. How far was the "Roanoke" from the coast?

A. I could not see the coast line.

Q. You do not know how far she was then?

A. No, sir, I could not see in the fog, it was too thick.

Q. On your direct examination you said two miles?

A. I don't know exactly outside of the messages that were exchanged saying it was two miles.

Q. Of your own knowledge do you know how far the "Roanoke" was from the coast? A. No, sir.

Q. You don't know? A. No, sir. [139—44]

Q. Do you know how far off the coast you can hear the fog horn? A. It was very strong.

(Testimony of B. Frankel.)

Q. Do you know how far off the coast you can hear it? A. No, sir.

Q. Don't you know as a matter of fact you can hear the fog-horn 17 miles out at sea?

A. I believe so.

Q. Don't you know in the fog you can hear it 17 miles and hear it strongly off the coast?

A. They don't blow the fog-horn unless it is foggy.

Q. I say don't you know you can hear it 17 miles off the coast? A. Further.

Q. You know the actual Government test is 17 miles? A. Yes, sir.

Q. You heard of tests being made? A. Yes, sir.

Q. You have a record of the fog-horns?

A. Not the Point Arguello.

Q. You have a record of all the fog-horns along the coast? A. Briefly.

Q. What are the records of those fog-horns along the coast? A. About 25 miles.

Mr. WALL.—I would like to put in an objection to all this character of cross-examination as unnecessarily burdening the record, and as not being applicable to the examination in chief; that the answer to the libel itself states that the "Roanoke" was not more than two miles south of Point Arguello and there can be no purpose in this examination as far as this witness is concerned except to burden the record.

Mr. SOOY.—I would like to make this statement then. The record was unnecessarily burdened in the direct examination [140—45] in that the wit-

(Testimony of B. Frankel.)

ness was asked as to the weather conditions off Point Arguello and gave it as his opinion that the vessel was two miles offshore because he could hear the fog-horn. The purpose of this examination goes particularly to the competency of the witness.

Q. Now, do you know of your own knowledge whether this place where the "Roanoke" was was an exposed place, or not? A. I believe so.

Q. Do you know of your own knowledge?

A. It was not a very good place to be.

Q. Do you know whether it was an exposed place, or not? A. Yes, sir, I do.

Q. What do you mean by an exposed place?

A. Well, we could hear the breakers, for instance, from the shore; that was very near.

Q. Can't you hear the breakers anywhere two miles from the coast?

A. No, only very near shore.

Q. You cannot? A. No, sir.

Q. Did you ever hear breakers two miles from the coast in your life? A. No, sir.

Q. You say it was an exposed place because you could hear the breakers?

A. Well, the position of the "Roanoke" was not very safe. She was right at the point there and the sea is apt to break up any minute because it was a heavy swell.

Q. How do you know she was right at the point?

A. The strength of the fog-horn, for instance.

Q. You say within two miles of the point in your direct examination. Now, if she is two miles from

(Testimony of B. Frankel.)

the point and there is no wind blowing how do you make it out she was in an [141—46] exposed place?

A. Well, the strength of the fog-horn was too strong to be safe for any navigator travelling around there in a fog. The fog-horn was too loud to be safe and the breakers from the shore, you could hear them quite well.

Q. What do you mean by an exposed place; that condition would be true any where, would it not?

A. Yes, sir.

Q. You would say if the "Roanoke" were in San Francisco Bay and if she were up close to the mud flats she would be in an exposed place, would you not? A. If you want to say so.

Q. The reason she was in an exposed place was because she was within two miles of shore and the breakers could be heard?

A. I could not say how many miles she was within shore; she might have been 50 as far as that is concerned.

Q. Do you know whether the wind was apt to blow with great violence during the month of April?

Mr. WALL.—We object to that; he said all he could about the wind blowing there. This is distinctly not proper cross-examination to prove something else by this witness or to impeach him by asking something of that nature when he stated just exactly what he knew about how the winds blew and he did not say anything of the kind in the question asked.

(Testimony of B. Frankel.)

Mr. SOOY.—Q. Answer the question.

Mr. WALL.—Read the question, Mr. Reporter, to the witness.

(The Reporter reads the question.)

A. Well, I am not a navigator in any way. I have not got to make up the deck department in charge of the weather, but from my past experience I should judge that the winds around Point Arguello are apt to blow at times a little strong like that.

Mr. SOOY.—Q. Would you say they would blow with great [142—47] violence during the month of April at any time?

Mr. WALL.—The question is contrary to my objection, and it is an attempt to force some statement from the witness.

A. Well, it all depends upon what great violence means; it might be 90 miles an hour for all that and the winds around Point Arguello do not blow at that strength. I should judge it was not in great violence for you cannot say that.

Mr. SOOY.—Q. A strong wind? A. Yes, sir.

Q. The winds there as far as you know blow with great violence around Point Arguello, do they?

A. I cannot say if you call it great violence, or not.

Q. How do you know that the coast was rocky and dangerous at all around where the "Roanoke" lay?

A. From passing that point there.

Q. You mean by an exposed beach—what do you mean by an exposed beach?

A. No coves and it is easy to run ashore.

Q. Is not the whole coast from San Francisco

(Testimony of B. Frankel.)

down outside of Monterey Bay and Port Harford, is not that an exposed coast? A. Yes, sir.

Q. Are not all coasts exposed?

A. More or less.

Q. Would not the vessel be exposed if she were out five miles at sea?

A. No, sir, you could not say that.

Q. You could not say she was exposed?

A. No, sir. If she was near the shore she is exposed.

Q. That is what you mean by the term exposed?

A. Yes, sir.

Q. Did you see the coast line at any time after you got the line aboard the "Santa Clara"?

A. No, sir.

Mr. WALL.—He has testified several times that he did not. It is only encumbering the record.

Mr. SOOY.—Q. Do you know whether the "Santa Clara" came [143—48] dangerously near colliding with the "Roanoke"?

A. I could not see as I was in the room at the time.

Q. You did not see that? A. No, sir.

Q. You have not any knowledge as to whether she came very near colliding with the "Roanoke," have you? A. No, sir.

Q. Did you hear the whistle of the "Roanoke" when you got near her? A. I could not say.

Q. Say approximately? A. It was.

Q. It was before you could see her?

A. Yes, sir.

Q. You saw her first 500 feet away?

(Testimony of B. Frankel.)

A. I heard the whistle before I saw the "Roanoke."

Q. You think you were 1,500 to 2,000 feet?

A. It might be 15 miles as far as that goes, I could not tell.

Q. How long before you saw the "Roanoke" did you hear her whistle the first time?

A. I should judge about 10 minutes.

Q. 10 minutes before? A. Yes, sir.

Q. Were you going under a full head of steam on the "Santa Clara"?

A. We were proceeding very slow.

Q. Very slowly? A. Yes, sir.

Q. Then how do you say in your libel here that you came very nearly colliding with the "Roanoke"?

A. I did not say so.

Mr. WALL.—He did not swear to the libel.

Mr. SOOY.—He did not swear to the libel.

Mr. WALL.—No.

Mr. SOOY.—Q. You do not know as a matter of fact whether you came very near colliding with her, or not?

A. I was in the wireless room, I could not say.

Mr. WALL.—He has answered that question a number of times. There would be no purpose of reiterating that except to encumber the record. [144—49]

Mr. SOOY.—Will you make your objection, Mr. Wall.

Mr. WALL.—I object to it as encumbering the record.

(Testimony of B. Frankel.)

Mr. SOOY.—Q. After the “Santa Clara” received the line which was put out by the “Roanoke’s” crew, what did the “Santa Clara” do, if anything?

A. Well, I believe she proceeded to tow the “Roanoke” up to Port Harford.

Q. Do you know whether she lay off San Luis Obispo with the “Roanoke” all night, or not?

A. No, sir, I was asleep at the time.

Q. What time did you turn in, did you say?

A. 1 A. M.

Q. In the morning? A. Yes, sir.

Q. How far had you gotten down the coast at 1 A. M.? A. I could not say.

Mr. WALL.—Do you mean how far he had gotten down the coast?

Mr. SOOY.—Q. Up the coast.

Q. You do not know? A. No, sir.

Q. Do you know whether the “Santa Clara” took the “Roanoke” into San Luis Obispo, or not?

A. I believe she did. When I arose the next morning I see the “Roanoke” outside of the harbor there so she must have taken her there.

Q. Did you render any service in or about the towage of the “Roanoke”?

A. No, sir, I was on watch.

Q. All you did was to receive and send wireless messages? A. Which was my duty, yes.

Q. That is all you did? A. Yes, sir.

Q. You did not assist in making this line fast?

A. No, sir.

(Testimony of B. Frankel.)

Mr. WALL.—We will admit all that if you want us to.

Mr. SOOY.—I want to get out what the witness did.

Q. You did not aid the crew, you did not do any work in or [145—50] about her?

A. No physical work.

Q. You turned in at 1 A. M. in the morning?

A. I did.

Q. For that service of receiving and sending these messages you ask for some salvage, do you?

A. I do.

Q. That is your position before the Court, is it?

A. Yes, sir.

Q. Weren't you paid for sending and receiving these messages?

Mr. WALL.—We object to that as not proper cross-examination; and as counsel must know as a matter of law that whether he was paid for doing his duties, or not has nothing to do with whether he is entitled to salvage services.

Mr. SOOY.—Q. Just answer my question.

A. Yes, sir, I was paid to do that the same as any member of the crew to do his duty.

Q. Just answer the question.

Mr. WALL.—He has answered.

Mr. SOOY.—Q. You have answered that you were paid? A. Not at the time, I was paid later.

Q. You were paid?

A. Not for that service, but as a wireless operator.

Q. You were paid for sending and receiving those

(Testimony of B. Frankel.)

messages, were you not?

A. During the month, yes.

Q. But the only duty you performed was to receive and send these messages which are in evidence here?

A. Yes, sir and do purser work.

Mr. WALL.—We will admit all of that.

Mr. SOOY.—I understand, just make your objection.

Mr. WALL.—I say we will admit all of that.

Mr. SOOY.—Make your objection.

Mr. WALL.—I have no objection except that this is encumbering the record when I am willing to admit all the [146—51] facts.

Mr. SOOY.—Make your objection.

Mr. WALL.—I am stipulating this.

Mr. SOOY.—You and I do not seem to be able to stipulate to anything. Go ahead and make your objection.

Mr. WALL.—Whenever I am willing to state that I am willing to admit anything I am going to state it and have it go in the record.

Mr. SOOY.—That is perfectly satisfactory, anything you want.

Q. You turned in at 1 A. M.? A. Yes, sir.

Q. On the morning of the 11th? A. Yes, sir.

Q. Where was the vessel at that time?

A. I could not say.

Q. Did you go to sleep when you turned in?

A. I did.

Q. Did you sleep soundly? A. I did.

Q. Until what time? A. 8 A. M.

(Testimony of B. Frankel.)

Q. On the morning of the 11th? A. Yes, sir.

Q. You were performing this service of salvage of the "Roanoke" from 1 A. M. to 8 A. M.?

A. No, sir, I was asleep at the time.

Q. Had the "Roanoke" been salved at the time that you turned in? A. What do you mean?

Q. At the time that you went to sleep in the morning at 1 A. M. was the "Roanoke" put into a safe position? A. She was.

Q. Where? A. I believe at Port Harford.

Q. Are you sure? A. Yes, sir.

Q. You are sure?

A. I could not say I was sure, I was asleep; I could not be asleep and sure at the same time.

Q. I am asking you if at the time you went to sleep the "Roanoke" was still in tow by the "Santa Clara"? [147—52]

A. A few hours she was in tow and then she was dropped.

Q. Answer the question.

A. There is various ways of answering that.

Q. Answer the question the way I want you to and you know the way? A. No, sir, I do not.

Q. Then, I will ask you if at 1 A. M. on the morning of the 11th of April at the time you turned in and went to sleep was the "Roanoke" still in tow by the "Santa Clara"? A. That is the same thing.

Q. Was she, or was she not?

A. She was for a few hours and then she was dropped.

Q. Then at 1 A. M. she was still in tow?

(Testimony of B. Frankel.)

A. Yes, sir.

Q. That is it, exactly? A. Yes, sir.

Q. That is the time you went to sleep?

A. Yes, sir.

Q. And at that time the "Roanoke" had not been brought into a place of safety?

A. She was before 8 A. M.

Q. At 1 A. M. she was not? A. No, sir.

Q. She was not? A. No, sir.

Q. So you are one of the libelants here asleep from 1 A. M. until 8 A. M. of April 11th, and now for sleeping from 1 A. M. in the morning until 8 A. M. you ask to be paid by the North Pacific Steamship Company?

Mr. WALL.—We object to that as not proper cross-examination and it is entirely an unfair method of cross-examination and has nothing whatever to do with this case in any possible way.

Mr. SOOY.—Q. Just answer the question.

A. I do.

Q. You do? A. Yes, sir.

Q. You expect to be paid for the time while you are asleep, [148—53] do you?

A. Certainly.

Q. You think you did your full duty by the North Pacific Steamship Company in sleeping, do you?

A. I do.

Q. During that period of time? A. I do.

Q. Did you consider at any time that the "Roanoke" was in any great danger?

A. I was in need of sleep and I had to sleep.

(Testimony of B. Frankel.)

Q. Answer the question. Read the question, Mr. Reporter. (The Reporter reads the question.)

A. Yes, sir.

Q. What time?

A. I could not say, when I was asleep she was in danger.

Q. She was in danger at the time you went to sleep? A. I believe so.

Q. What makes you think so?

A. If the line parted we would have another job on our hands of getting the line aboard again.

Q. If the line did not part she was all right?

A. Yes, sir.

Q. Then the only danger was if the line had parted, and if the line did not part she was all right?

A. Yes, sir.

Q. Was there any other danger?

A. I could not say. The boilers might blow up.

Q. Don't you know, as a matter of fact, they had the boilers burned down? A. No, sir.

Q. Don't you know, as a matter of fact, the steam was down? A. No, sir.

Q. Other than the ordinary risk in towing vessels the "Roanoke" was not in any greater risk?

A. No, sir.

Q. You felt reasonably sure that the "Roanoke" was not in a great danger after the line was put out on her? A. Personally, no.

Q. You thought there was still danger?

A. I did not think [149—54] so; the others might have.

(Testimony of B. Frankel.)

Q. You did not think there was any personal danger at all? A. No, sir.

Q. That is why you turned in at 1 o'clock?

A. No, sir, sleep demanded that I turn in.

Q. Sleep demanded that you turn in?

A. Yes, sir.

Q. You were all in at the time, were you?

A. No, sir.

Q. You thought at the time there was no need of staying up any longer?

A. While the other operator was on watch I thought I could turn in.

Q. You thought there was no great danger to the vessel?

A. If there was I would have the other operator call me.

Q. Do you know if any members of the crew turned in at that time? A. No, sir.

Q. You do not know of any other one but yourself? A. That is the idea.

Q. As a libellant here you are asking quite a large sum of the North Pacific Steamship Company for that service rendered?

Mr. WALL.—Where do you find that in the libel?

Mr. SOOY.—I am asking if that is the case.

Mr. WALL.—I object to that as unfair cross-examination and a question that should not be put to any witness in view of the fact that the libel clearly says, "that this Honorable Court would be pleased to decree such a sum of money or proportion of the value of the said steamer 'Roanoke,' " and so on, "to

(Testimony of B. Frankel.)

each of said libelants and others, salvors, as a compensation for their salvage services." It does not name any amount. I object to that as unfair cross-examination.

Mr. SOOY.—I think I am fair in my questions.

Q. Then you expect from the Court in this case compensation [150—55] for what you did there as a wireless operator? A. I do.

Mr. SOOY.—That is all.

Mr. WALL.—No questions. [151—56]

United States of America,
State and Northern District of California,
City and County of San Francisco.

I, Francis Krull, a United States Commissioner for the Northern District of California, do hereby certify that pursuant to the order of reference made to take and report the testimony herein that on Tuesday, June 17th, 1913, I was attended by F. R. Wall, Esq., Proctor for the Libelant, and C. H. Sooy, Esq., Proctor for Claimant, and by the witnesses, Albert H. Ginman, Charles P. Doe and B. Frankel, who were of sound mind and lawful age, and that the said witnesses were by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in said cause; that the foregoing testimony was taken in shorthand by Herbert Bennett, a competent stenographer, and afterwards reduced to typewriting, pursuant to such order of reference.

In witness whereof, I have hereunto subscribed my hand at my office in the City and County of San

Francisco, State of California, this 15th day of June, 1913.

FRANCIS KRULL,
U. S. Commissioner, Northern District of California,
at San Francisco.

[Endorsed]: Filed Sept. 15, 1913. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [152—
57]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

OSKAR JOHANSEN et als.,

Libelants,

vs.

The Steamer "ROANOKE," etc.,

Respondent.

Monday, July 14th, 1913.

TESTIMONY TAKEN ON REFERENCE BE-
FORE FRANCIS KRULL, U. S. COMMIS-
SIONER.

APPEARANCES.

F. R. WALL, Esq., for the Libelants.

C. H. SOOY, Esq., for the Respondent. [153—1]

[Testimony of F. G. Palmer, for Libelants.]

F. G. PALMER, called for the libelants, sworn.

Mr. WALL.—Q. Give your full name, Palmer.

A. F. G. Palmer.

Q. Where were you on April the 10th of this year?

A. I was on board the steamer "Santa Clara."

(Testimony of F. G. Palmer.)

Q. Where was that vessel at that time?

A. The "Santa Clara" at the time was about an hour or an hour and a half off the part of San Luis, or Port Harford.

Q. Where was she going?

A. She was bound for Port Harford.

Q. Where had she come from?

A. San Francisco.

Q. When did she leave San Francisco?

A. She left San Francisco on the 9th.

Q. What were you doing on the "Santa Clara," if anything, in the forenoon of April 10th, 1913?

A. In the forenoon I was below. I was below from 8 to 12 in the morning.

Q. Go ahead and tell what, if anything, occurred on the "Santa Clara" beginning from the morning of April the 10th, from that time on with relation to the steamer "Roanoke."

A. Anything that occurred from 8 to 12.

Q. No, from the morning of April the 10th onward. That is, tell a connected narrative of what happened so far as you know?

A. Well, it happened that we received a message from the "Roanoke" to come to assist her.

Q. And what was done on the "Santa Clara" then?

A. The course of the "Santa Clara" was shifted for Point Arguello.

Q. Did the "Santa Clara" go into San Luis Obispo, or did she go elsewhere from there?

A. She did not go into San Luis Obispo. [154—2]

Q. Where did she go?

(Testimony of F. G. Palmer.)

A. She went down to Point Arguello.

Q. How long did it take her to go to Point Arguello? A. About five hours.

Q. While she was steaming toward Point Arguello, tell fully what was the condition of the weather?

A. The weather was fair, it started to get foggy on the way down about four o'clock.

Q. About four o'clock?

A. About four o'clock or half-past three.

Q. And how was the fog?

A. Very thick, the thickest fog I have ever seen this year on this coast.

Q. After the steamer "Santa Clara" arrived off Point Arguello what did she find there?

A. She found the "Roanoke" laying there at anchor.

Q. Where was the "Roanoke" lying at an anchor?

A. About a mile or a mile and a half south of the point.

Q. South of the Point Arguello? A. Yes, sir.

Q. How do you fix the position of the "Roanoke" as being a mile or a mile and a half south of the Point Arguello? A. By the sound of the whistle.

Q. What whistle?

A. The whistle of herself and the whistle of the light-house.

Q. What condition was the "Roanoke" in?

A. She lost her propeller and she was without means to proceed on her voyage.

Q. What was the direction, if any, of the wind there at that time?

(Testimony of F. G. Palmer.)

A. The wind was northwest; northwest and westerly.

Q. How often have you been by that part of the coast during the month of April?

A. I went by there twice down and twice up.

Q. And what winds were prevailing during the time that you [155—3] went by?

A. Northwest every trip.

Q. And as to the force of the wind on those trips, the force of the wind from the northwest, what can you say as to that?

Mr. SOOY.—We object to any testimony as to the force of the winds on any other trip save and except the trip on which this salvage case is concerned with.

Mr. WALL.—Q. Read the question, Mr. Reporter. (The Reporter reads the question.)

A. You mean as to those, the force of the wind?

Q. Any of those trips that you went by there during the month of April?

A. The trip before the salvage case happened was about No. 4—No. 5 wind; it was a little stronger than the trip the salvage case happened.

Q. And afterwards during the month of April?

A. The trip we salved her the wind was moderate.

Q. And any other trip?

A. I answered that question. It was a little stronger the trip before.

Q. What effect, if any, did it have upon the speed of the vessel you were on?

(Testimony of F. G. Palmer.)

A. It affected the vessel and kept her back about four hours.

Mr. SOOY.—The same objection to that line of testimony, Mr. Wall.

Mr. WALL.—Yes, the same objection to the whole line of that testimony.

Q. How often have you been by the coast in that locality altogether at any time during your cruising?

A. That is pretty hard to count up; you know, weekly trips.

Q. In going by state whether you went close by the coast or at a distance?

A. I went by on the steamer “Coos Bay” for three months every week twice last winter. [156—4]

Q. As to going far out or close along the coast state what the facts are?

A. We kept as close as possible in every trip.

Q. Were you or were you not able to make any examination of the coast to tell what the general condition of the coast was?

A. Yes, sir, you could see the coast clearly except in foggy weather.

Mr. SOOY.—Q. That is on the trips?

A. Yes, sir.

Mr. WALL.—Q. I am asking about the general condition of the coast on any trips, being able to inspect the coast?

A. And I went by the same points on the steamer “Governor” in the month of May, June to the 10th of July.

Q. What can you say as to the condition of the

(Testimony of F. G. Palmer.)

coast from Point Arguello, around Point Arguello and from Point Arguello south for a distance of two miles?

A. It is partly rocky; beach and hand rocks and partly rocks.

Q. I will show you the Coast and Geodetic Survey Chart of the Pacific Coast, No. 5300, from Santa Rosa Island to Point Buchon, California, directing your attention to that part of the chart in the vicinity of Point Arguello, and I will ask you to explain in detail from your observation using the chart as a diagram, the nature of the coast from Point Arguello down below to what is marked Rocky Pt?

A. Here is the Point Arguello (pointing); this is the lighthouse (pointing).

Mr. SOOY.—Putting your finger on the star marked Point Arguello F. L. W. in dark letters with the word “light” underneath and “siren” in parenthesis underneath that.

Mr. WALL.—Q. Now, how far out does the land stick out where the light-house is situated?

A. About half a mile. Oh, [157—5] the land outside?

Q. No, how far out does the land stick from the general coast? A. About half a mile.

Q. And what is the nature of the coast outside of the light-house?

A. Outside of the light-house it is about four or five rocks visible about a quarter of a mile out.

Q. As to their size?

A. Well, the general size—say about like this table

(Testimony of F. G. Palmer.)

over there (pointing) the way the rocks look from the ship about a mile and a half off.

Mr. SOOY.—Q. About six or eight feet square?

A. They are bigger than that when you come close. Sometimes they are visible and sometimes they are not. Three of them are visible always.

Mr. WALL.—Q. But about a mile off you say they look to be from six to eight feet square?

A. Yes, sir. To the south is some more rocks, right south of the light-house.

Q. And what size do those seem to be?

A. They seem to be a little bigger, about 15 or 20 feet somewhere.

Q. Go on then down the coast.

A. Then there is a little bit of rocky beach from here to here (pointing) about half a mile.

Q. Rocky beach from about here to here indicating from the light-house in a southeasterly direction across the bay to the coast? A. Yes, sir.

Mr. SOOY.—Are you going to offer this map in evidence?

Mr. WALL.—Yes.

A. (Contg.) Then there is a rocky point next with ordinary land about 60 feet high—not that much, about 40 or 50 feet high with rocks at the foot.

Q. Where?

A. At the foot of Rocky Point next to the [158—
6] beach.

Q. Put the point of the pencil where you mean?

A. Here is Rocky Point (indicating).

Q. Just a little to the right of the letter Pt?

(Testimony of F. G. Palmer.)

A. Rocky Point is right here.

Mr. WALL.—The witness putting his pencil on the period indicated by the name Rocky Point.

Q. Up above where the figure 5 is above the letters “Pt.” and a little bit to the northeastward what is the condition of the coast there?

A. The same kind of beach as between Point Arguello and this point here. (Indicating).

Mr. WALL.—Putting his pencil on the coast to the northeast of the figure 5.

Q. And going just below Rocky Point what is the condition of the beach there?

A. The beach is stony.

Q. A stony beach?

A. Yes, sir, stones as big as your hand. And off the beach is little rocks right along, most of them not visible except at low water.

Q. That is the way it appeared to you at what distance off of the coast? A. What is that?

Q. I say, that is the way it appeared to you at what distance off of the coast?

A. That is the way she appeared to me about a mile and a quarter off.

Q. About a mile and a quarter off the coast?

A. Yes, sir.

Mr. WALL.—We offer the chart in evidence as Libelants' Exhibit Palmer 1.

Mr. SOOY.—I offer a formal objection on the ground that it is incompetent, irrelevant and immaterial, and ask that all of the testimony of the witness based upon that exhibit be stricken out as in-

(Testimony of F. G. Palmer.)

competent, irrelevant and immaterial. [159—7]

(The map is marked Libelants' Exhibit Palmer 1.)

Mr. WALL.—Q. State what effect, if any, the fog had upon the navigation of the "Santa Clara"?

A. We had a fog so strong that we could not see the "Santa Clara" until about 100 feet away from her.

Q. You mean you could not see the "Roanoke"?

A. We could not see the "Roanoke" until we were pretty close to her, about 100 feet away from her; 100 feet or 150 feet.

Q. State whether or not the "Roanoke" was in any danger at any time from the "Santa Clara," from the navigation of the "Santa Clara"?

A. She was in danger of being run over.

Q. State just exactly what the facts were in regard to that; just what happened?

A. We steered for the steam whistle sound of the "Roanoke."

Q. Who was at the wheel of the "Santa Clara"?

A. I was at the wheel myself.

Q. Go ahead.

A. And we had a starboard helm on her and the "Roanoke" gave us a wrong whistle, a towboat whistle, that is two long whistles and a short one. She blew that whistle twice by mistake, I think. We thought it was a tug and steered for it, and we got the "Roanoke" in sight. I had a starboard helm on her. The "Roanoke" was on the port bow of us. If we run with that helm starboard we were

(Testimony of F. G. Palmer.)

bound to run her over in about five minutes, less than that, two and a half minutes; two minutes. So when we got in sight of her, a short distance from us, and I seen her and the orders came from the bridge "hard astarboard," right away to keep clear of her and we got clear of her just in time.

Q. Well, just before you got the order hard astarboard—

A. (Intg.) I started to move my wheel just at the time the [160—8] captain gave the orders because I seen the vessel just a second ahead of him.

Q. Then the fact is you anticipated his order by the slightest—

A. (Intg.) I expected his order to come.

Q. And you started to move your helm just a little bit before you got the order? A. Yes, sir.

Q. What was done in picking up the "Roanoke"?

A. The "Roanoke" lowered a boat with two men in it and brought a heaving line on board and by the small rope we hauled on board the hawser connected out of three different parts, ropes and wire and the last part was the chain of the "Roanoke."

Q. The cable of the "Roanoke"?

A. The anchor cable, yes, sir. Next to it was wire and to the wire was 1½ inch rope.

Q. Which anchor chain was it, do you know? If you do not know say so.

A. I am not sure. I think it was the starboard.

Q. Did you see that cable from the bow of the "Roanoke"?

A. No, sir, the "Roanoke," we just took the 1½

(Testimony of F. G. Palmer.)

inch rope on board; the wire was connected next to it and the crew of the "Roanoke" was pulling out the chain part of it; not much of it.

Q. What I mean is, the chain cable from the "Roanoke" lead from the bow of the "Roanoke"?

A. From the bow of the "Roanoke."

Q. How many anchors did the "Roanoke" have down at the time? A. One anchor.

Q. Did the "Santa Clara" have any suitable hawsers on board for towing, any suitable apparatus on board for towing? A. None at all. [161—9]

Q. The "Roanoke" then was taken in tow by the "Santa Clara"? A. Yes, sir.

Q. And what did the "Santa Clara" then do?

A. The "Santa Clara" headed her for Port Harford.

Q. During the time that you were taking the "Roanoke" in tow state whether or not you saw any other vessel there?

A. I saw a gray-painted steam schooner making to the "Santa Clara" shift its course.

Q. And how long did she stay there, this gray schooner?

A. She was under way and she just shifted her course and cleared a collision.

Q. After the "Roanoke" was taken in tow what did the "Santa Clara" then do?

A. She then towed her to Port Harford during the night.

Q. And what time did she arrive off Port Harford?

A. She arrived there about—she arrived off Port

(Testimony of F. G. Palmer.)

Harford some time around 4 o'clock in the morning.

Q. State whether or not you were on watch at the time she arrived off there.

A. I just went off watch when she arrived off Port Harford.

Q. And you went off watch at 4 o'clock, did you say, in the morning of the 11th? A. Yes, sir.

Q. And when you got up in the morning did you see the "Roanoke"?

A. I seen the "Roanoke" lying to anchor in Port Harford.

Q. I will ask you to look at the libel for salvage in this case and state whether or not the persons named in the libel as libelants were members of the crew of the "Santa Clara" on April the 10th and the 11th at the time that the "Roanoke" was taken in tow by the "Santa Clara." [162—10]

Mr. SOOY.—I object to that as calling for the conclusion of the witness, and further as not the best evidence.

Mr. WALL.—He was a member of the crew himself and knows whether these people were members of the crew from his own personal knowledge.

Mr. SOOY.—Is there any dispute here as to the members of the crew?

Mr. WALL.—You deny on information and belief that certain people were members. The only one I know of that there is any question about is this fellow Havness.

Mr. SOOY.—There are four or five there that we have no record of.

(Testimony of F. G. Palmer.)

Mr. WALL.—According to Mr. Doe's testimony it was this fellow Havness and Staly, but if we can agree that these people were members of the crew—

Mr. SOOY.—There was some doubt as to those.

Mr. WALL.—I do not want you to agree as to Havness and Haly and Staly because I am not sure of them myself. They signed the power of attorney, but I have not verified the facts.

Mr. SOOY.—We can get at the facts.

Mr. WALL.—Q. Read the names and say whether or not they were members of the crew of the "Santa Clara" on the 10th and 11th of last April at the time the "Santa Clara" picked up the "Roanoke" and towed her up to Port Harford. If there are any of them that you do not know, say no. Oskar Johansen? A. He was on board.

Q. H. Meislahn? A. He was on board.

Q. P. Cain? A. He was on board.

Q. F. G. Palmer, that is yourself?

A. Yes, sir. [163—11]

Q. George K. Bekker? A. He was on board.

Q. C. Christensen? A. He was on board.

Q. A. Johnsen? A. He was on board.

Q. A. C. Andersen? A. He was on board.

Q. E. Andersson? A. He was on board.

Q. H. Andreassen? A. He was on board.

Q. A. Fraser? A. I know him.

Q. O. Havness? A. I would not swear to that man.

Q. M. Staly? A. He was on board.

Q. M. Haly? A. That is the same man.

(Testimony of F. G. Palmer.)

Q. That is the same man as M. Staly?

A. Yes, sir.

Q. W. Kremer? A. Yes, sir.

Q. V. Matson? A. He was on board.

Q. J. Kotcharin? A. Yes, sir.

Q. C. Gibson? A. He was on board.

Q. A. Sjogren? A. He was on board.

Q. B. Frankel? A. Yes, sir.

Q. K. G. Clark? A. He was on board.

Q. A. S. Caskey? A. He was on board.

Q. S. B. Nilsen? A. He was on board.

Q. George M. Reed? A. He was on board.

Q. G. W. Jacobs? A. Yes, sir.

Q. A. Disher? A. He was on board.

Q. J. E. Johnson? A. Yes, sir.

Q. W. E. Pitts? A. He was on board.

Q. G. Drew? A. Yes, sir.

Q. A. G. Clarke? A. Yes, sir.

Q. J. Martin? A. Yes, sir.

Q. E. Andrews? A. Yes, sir.

Q. J. Pitts? A. Yes, sir. [164—12]

Q. And R. Tennant? A. Yes, sir.

Mr. WALL.—That is all.

Cross-examination.

Mr. SOOY.—Q. Where was the “Santa Clara” on the coast of California when she received the message from Mr. Doe to go to the “Roanoke”?

A. She was about a short while off from Port Harford.

Q. And how far is Port Harford from Point Arguello? A. It is about 40 miles.

(Testimony of F. G. Palmer.)

Q. What time did you receive your message from Mr. Doe?

Mr. WALL.—If the witness knows.

Mr. SOOY.—Q. If you know?

A. Well, about 11 or half past 10 in the morning.

Q. About 11 or half-past 10 in the morning?

A. Yes, sir.

Q. Of April the 10th?

A. Yes, sir, April 10th.

Q. And how long did it take the “Santa Clara” to go from Port Harford—off Port Harford to Point Arguello where the “Roanoke” was ?

A. About 6 hours.

Q. About 6 hours? A. Yes, sir.

Q. Did you run under a full head of steam?

A. We run under the full head of steam; not all the time, we slowed down sometimes on account of the fog.

Q. Yes, but how much of the time were you slowed down?

A. We did not slow down until we hear her steam whistle.

Q. The steam whistle of the “Roanoke” do you mean? A. Yes, sir.

Q. And how far were you from the “Roanoke” when you first heard her whistle?

A. Well, she has got a strong whistle.

Q. Approximate it, Mr. Palmer?

A. About 7 or 8 miles. [165—13]

Q. So that from Port Harford to the time when you were within 7 or 8 miles of the “Roanoke” you

(Testimony of F. G. Palmer.)

did not slow down at all, did you; you ran right along? A. We ran right along.

Q. Usual course of speed? A. Yes, sir.

Q. You were at the wheel, were you, from half-past 10?

A. I was at the wheel from 10 to 12.

Q. From 10 to 12?

A. No, sir, I was below.

Q. Were you on duty at all?

A. I was on duty in the afternoon.

Q. At what time?

A. From two to four and from five to six.

Q. You were on duty from two to four and from five to six? A. Yes, sir.

Q. So that you were at the wheel when you heard the whistle of the "Roanoke"? A. Yes, sir.

Q. How far were you from the "Roanoke" when you first saw her?

A. Only somewheres about 150 or 200 feet.

Q. And you could not see her before that time?

A. We could not see her.

Q. What speed were you under at the time you saw her? A. Six to 7 miles.

Q. Six to seven miles? A. Yes, sir.

Q. And, then, as I understand, your testimony, as soon as you saw her you threw your wheel hard over to starboard?

A. I threw my wheel hard over to port.

Q. And what did you expect to do by throwing your wheel over to port? What way did you expect to go, on which side of the "Roanoke"?

(Testimony of F. G. Palmer.)

A. Can I explain?

Q. Yes.

A. I had the wheel starboard, and if we put the wheel to port we call it starboard; that is the style [166—14] of seamen. I moved my wheel starboard, the ship had to turn to port then. The ship went to port when the "Roanoke" came in sight on the port bow about three points—three or four points on the port bow. This "Santa Clara" was swinging to port at the same time, so I seen the ship and I heard the captain say, here is the "Roanoke"; at the same time I expected him to give me the order to port, to make the ship swing starboard, and I give her port about a second ahead before the captain gave me the orders.

Q. You were going down the coast, were you not, on the "Santa Clara"? A. Yes, sir.

Q. So that when you threw your wheel hard to port, or hard to starboard—

A. (Intg.) Hard to port.

Q. (Contg.) When you threw it hard to port you expected to keep on the ocean side of the "Roanoke"?

A. To keep out to sea of the "Roanoke."

Q. How far were you from the coast line at the time you saw the "Roanoke"?

A. Well, it was not—we was not any farther than the "Roanoke."

Q. How far is that?

A. A mile and a half, or a mile and three-quarters in my judgment.

(Testimony of F. G. Palmer.)

Q. Were you in the regular path of vessels that ply between San Francisco, Los Angeles and San Pedro? A. I have been on that run.

Q. I am speaking now on this particular day. Were you right in the pathway of the vessels that come up and go down?

A. We were inside of the course of the vessels.

Q. You were inside of the course of the vessels?

A. Yes, sir, about $\frac{1}{2}$ or three-quarters of a mile inside.

Q. Inside the course of the vessels that ply between San [167—15] Francisco and San Diego?

A. Yes, sir.

Q. You then must have put your helm to starboard before you saw the "Roanoke," after you heard her whistles.

A. I had starboard orders before to head up for the whistle.

Q. You had starboard orders to head up for the whistle? A. Yes, sir.

Q. So that by putting your helm to starboard after you received these orders to head up for the vessel you had run a half or three-quarters of a mile closer to the coast than you would have gone if you had proceeded right on your way?

A. That did not make much difference, because the orders of starboard came a few minutes before the order of port.

Q. It did not make much difference?

A. No, sir.

Q. I understand the "Santa Clara" was one-half

(Testimony of F. G. Palmer.)

or three-quarters of a mile nearer the coast than she would have been if she had not run to pick up this vessel? A. Yes, sir.

Q. Was there any wind that day, Mr. Palmer?

A. There was a northwest, a westerly wind.

Q. And what was the velocity of the wind, do you know? A. Coming wind, ordinary wind.

Q. Just an ordinary wind? A. Yes, sir.

Q. Was the sea choppy?

A. The sea was just ordinary; a little choppy.

Q. Was there any ground swell running?

A. There is always a ground swell running.

Q. There is always a ground swell on the coast between San Francisco and San Pedro?

A. Yes, sir.

Q. All up and down the coast?

A. Yes, sir, almost; more or less.

Q. Sometimes those ground swells are very violent, are they [168—16] not?

A. They are very heavy.

Q. At ordinary times just the ordinary condition of the sea known to seamen as ground swells?

A. It depends on the wind.

Q. This day was not—there was not on this day any strong movement of the water, was there?

A. No, sir.

Q. Just the same as ordinary weather?

A. Yes, sir, except the fog.

Q. So that the only unnatural, or I would say the only abnormal condition of the weather at that time was the fog. That is true?

(Testimony of F. G. Palmer.)

A. The fog and the distance offshore.

Q. I understand. I am speaking about the weather now? A. Yes, sir, the fog.

Q. That is the only thing that bothered you at all, is it not?

A. That is the thing that bothered us.

Q. If it had not been for the fog why you could have gone right to this vessel easy, could not?

A. Yes, sir.

Q. So that the fog was the only condition of the weather that bothered you at all, was it not, at that time?

A. The fog and the undertow bothered us a little.

Q. I understand. I am speaking about the condition of the weather now?

A. You count undertow to the weather?

Q. No, I am just speaking about the weather; the only condition of the weather that bothered you at all in picking up the "Roanoke" was the fog. That is true? A. Yes, sir.

Q. Was that an exceptional thick fog, Mr. Palmer?

A. It was an exceptional thick fog.

Q. Was it any thicker on that day than at other times when you passed there? [169—17]

A. It was the thickest I had that spring.

Q. Did you ever see it as thick as that before?

A. Yes, sir, oh yes.

Q. Was there any excitement on board the "Santa Clara"? A. How do you mean?

Q. Was there any excitement among the officers

(Testimony of F. G. Palmer.)

or the crew of the "Santa Clara"?

A. Not particularly.

Q. There was no excitement? A. No, sir.

Q. There was not any quick or hurried orders given? A. Except the helm orders.

Q. That is the only thing? A. Yes, sir.

Q. Did the captain tell the crew to stand by and lower away boats?

A. To stand by and take the hawser of the "Roanoke."

Q. That was the only order given other than the order to port the helm?

A. That is the only order, to stand by and take the hawser.

Q. Did the members of the crew of the "Santa Clara" expect to stand by and take up this line from the "Roanoke"? A. That is all they did.

Q. That is all they did? A. Yes, sir.

Q. The line from the "Roanoke," as I understand it was delivered—there was a hand line, is that what you call it? A. Heaving line.

Q. A heaving line was given—first a working boat was lowered from the "Roanoke"?

A. Yes, sir.

Q. And in this working boat were two men?

A. Two men and one officer.

Q. And one officer? A. Yes, sir.

Q. Who was that, the mate?

A. I think it was the second mate; I am not sure.

[170—18]

Q. And they were given a heaving line, and they

(Testimony of F. G. Palmer.)

took this heaving line to the side of the "Santa Clara"? A. To the stern of the "Santa Clara."

Q. To the stern? A. Yes, sir.

Q. On which side? A. On the port side.

Q. And then the crew of the "Santa Clara" took this hand line, did they? A. Yes, sir.

Q. And then with this hand or heaving line they drew in the main hawser?

A. They pulled in the main hawser.

Q. They pulled in the main hawser?

A. Yes, sir.

Q. And then they made that hawser fast to the bitts? A. To the bitt.

Q. On her stern? A. Yes, sir.

Q. And they took a turn around these bitts, did they?

A. Yes, sir, one bitt—two bitts. They made the main hawser fast to the port bitt and put the lashing through from the starboard bitt to the chock.

Q. About how much line did you have bent on to the "Roanoke"?

A. We had 40 fathoms of 12-inch.

Q. 48 fathoms of 12-inch? A. About 40.

Q. That would be how much; how many feet?

A. 40 fathoms; that would be 40 times 6, 240 feet.

Q. And then the "Santa Clara" proceeded to tow the "Roanoke," did she? A. Yes, sir.

Q. Now, which anchor did the "Roanoke" have down when you saw her?

A. The starboard anchor, I think.

Q. Just one anchor? A. Just one anchor.

(Testimony of F. G. Palmer.)

Q. Do you know how many feet of water there were under the "Roanoke" at that time?

A. About 60 feet—it was more than that, about 60 to 100 feet. [171—19]

Q. As a matter of fact, it might be a little deeper than 100 feet? A. Yes, sir, it might be.

Q. Were there any soundings taken there at that time?

A. No soundings taken, not on board the "Santa Clara."

Q. You do not know whether they took any on board the "Roanoke," do you? A. No, sir.

Q. How far was the "Roanoke" from the first land; that is, I mean, how far was she from the line of the beach? A. To the nearest land?

Q. Yes, the nearest land?

A. She was about three-quarters of a mile to a mile of the rocks.

Q. Three-quarters of a mile to a mile from the rocks? A. Yes, sir.

Q. And how much water was there, if you know, one-half a mile inshore from the "Roanoke"?

A. There is supposed to be five fathoms.

Q. That would be 30 feet?

A. Oh, half a mile inside it would not be more than three to five fathoms.

Q. That would be 18 to 30 feet of water?

A. Yes, sir, six feet to a fathom.

Q. How much closer could the "Roanoke" have gone to the shore before her bottom would strike the bottom of the sea?

(Testimony of F. G. Palmer.)

A. She could not go much more than about one-half a mile to the northward.

Q. How much could she have gone to the eastward? A. About the same amount.

Q. About half a mile? A. Yes, sir.

Q. Do you know how heavy the anchor of the "Roanoke" is, her stern anchor?

A. No, sir, that I do not.

Q. How long did it take the "Roanoke" to weigh her anchor [172—20] after you had the line bent on to her? A. About 15 minutes.

Q. So that after she had weighed her anchor then you proceeded to tow her, the "Santa Clara" did?

A. After she had weighed her anchor the "Santa Clara" proceeded to tow her.

Q. And how long were you from the time she weighed her anchor until you arrived at Port Harford?

A. She arrived sometime between 4 and 8 in the morning.

Q. Between four and eight in the morning?

A. Yes, sir, on my watch below.

Q. And you had the line bent on her at what time?

A. Quarter to six, or half-past five.

Q. In the afternoon? A. Yes, sir.

Q. And at a quarter to four the next morning she was close to Port Harford?

A. Not inside, outside Port Harford cruising back and forth waiting for daylight.

Q. Now, Mr. Palmer, when did you go off duty

(Testimony of F. G. Palmer.)

again, at six o'clock in the afternoon?

A. I went off duty from six to 12.

Q. And when did you go on again?

A. From 12 to 4.

Q. From six o'clock to 12 o'clock what did you do?

A. I had my watch below, slept.

Q. You went to sleep, did you? A. Yes, sir.

Q. Did you sleep comfortably? There was not anything to disturb your slumber, was there?

A. They did not wake me up.

Q. I say you sleep peacefully, the same as you do on the ordinary run?

A. Except the fog whistle kept me awake. They had to blow the fog whistle every minute.

Q. Every minute they blew the fog whistle?

A. Yes, sir.

Q. They do that on the ordinary run?

A. We had to shift [173—21] the whistle. We blew a tug whistle, just like a towboat.

Q. Other than that there was nothing to disturb your slumber, was there?

A. Nothing besides the whistle.

Q. You did not wake up at all, did you, after you went asleep?

A. Oh, sure, I woke up from the fog whistle once in a while.

Q. But you slept peacefully, did you?

A. Yes, sir.

Q. Did the "Santa Clara" put into Port Harford with the "Roanoke"?

A. Yes, sir, she put in in the morning between

(Testimony of F. G. Palmer.)

four and eight. I was below again.

Q. Just as soon as daylight? A. Yes, sir.

Q. Did you turn in at four o'clock?

A. I turned in at four o'clock.

Q. Did you go to sleep again? A. Yes, sir.

Q. And you slept how long?

A. To a quarter past seven.

Q. Until a quarter past seven in the morning?

A. Yes, sir.

Q. And what time did the "Santa Clara" put into Port Harford? A. About that time.

Q. A quarter past seven? A. About seven.

Q. About seven o'clock? A. Yes, sir.

Q. It did not get light enough to put in before that? A. No, sir.

Q. Did these men that got into this working boat from the "Roanoke" have any difficulty in getting from the "Roanoke" over to the "Santa Clara"?

A. They had no difficulty in getting over, but they had difficulty in getting on again; that is the worse, hoisting the boat up.

Q. But they had no difficulty in getting over to your vessel? A. No, sir.

Q. At no time was there any danger of the working boat being swamped, was there, or anything of that kind? A. No, sir, [174—22] there was no danger of being swamped.

Q. In other words, that boat could live there in those waters all right, could it, without any difficulty? A. It could in that sea.

Q. If you had been in that row-boat you would

(Testimony of F. G. Palmer.)

not have felt you were in any danger, would you, Mr. Palmer? A. No, sir, I would not.

Q. Now, Mr. Palmer, would you say that the "Roanoke" was in greater danger at that particular place on that particular day than she would have been in if she were in San Francisco Bay, if there was just as heavy a fog in San Francisco Bay as there was in that particular place on that day?

A. Oh, yes.

Q. You say she was in greater danger?

A. Yes, sir.

Q. Why do you say that?

A. Because if it should have started to blow her anchor would not have been no good.

Q. I am assuming now there was no wind, which you have testified to, merely an ordinary wind; assume that ordinary wind was in San Francisco Bay and the same fog, would you say the "Roanoke" was in greater danger in the bay, or in greater danger down there?

A. Down there. The wind might spring up.

Q. I am not speaking about whether the wind might spring up?

A. On account of passing vessels.

Q. Would you not have passing vessels in the bay here?

A. But the ship in the bay would not be laying in a place she had no business.

Q. I am speaking—I am assuming the vessel was lying in the bay, in the stream, and there was a thick fog and the same amount of wind you had on that

(Testimony of F. G. Palmer.)

day, where would you say there [175—23] would be the greatest danger?

A. On Point Arguello, on account of the vessels passing by getting off their course.

Q. Not as many vessels would be passing by there as in the bay?

A. There was a good position for them here.

Q. Are you a regular officer? A. No, sir.

Q. Would not there be more vessels coming by here than off Point Arguello?

A. They would not be able to get off their course here.

Q. I am assuming now that the "Roanoke" would be anchored in the stream in the bay here in a heavy thick fog, in the heaviest kind of thick fog and with the same amount of wind you had down there on that day, would you not say the "Roanoke" would be more liable to be hit in San Francisco Bay than she would down there? A. No, sir.

Q. Why?

A. Because there is a better anchor place here; they are supposed to be in anchor place.

Q. I understand. Suppose she was not anchored in that place, supposed the anchor was not—

A. (Intg.) You mean in case of accident?

Q. Yes.

A. She would be in just as much danger.

Q. Would you not say in more danger?

A. In Frisco Bay?

Q. Yes?

(Testimony of F. G. Palmer.)

A. No, sir, I would keep her whistling as well as down there.

Q. Suppose a vessel in thick fog lost her tail shaft off Goat Island and had to drop anchor right there, would you not say she would be in great danger?

A. Yes, sir.

Q. You say she would be in great danger?

A. Yes, sir.

Q. There are a great many more vessels passing her in San Francisco Bay than would pass her at Point Arguello? [176—24]

A. Yes, sir, there are more vessels, small kind, too.

Q. She would be in greater danger so far as passing vessels are concerned in the bay than she would be at Point Arguello?

A. Yes, sir.

Q. Now, then, the reason you say the "Roanoke" was in great danger is because a wind was liable to spring up?

A. Yes, sir.

Q. And because she would be liable to be struck by passing vessels?

A. Yes, sir.

Q. Those are the only two reasons?

A. Yes, sir, and the tide.

Q. The wind and passing vessels are the only things that made that vessel be in a dangerous position, otherwise if the wind did not spring up the anchor would hold?

A. I don't know if she had good anchor ground there.

Q. But the anchor had held her?

A. It might of for a while.

Q. Well, the anchor had for several hours.

(Testimony of F. G. Palmer.)

A. Yes, sir.

Q. She had not dragged her anchor at all?

Mr. WALL.—How does he know?

A. I do not know.

Mr. SOOY.—Q. She had only one anchor?

A. Yes, sir.

Q. You are familiar with the whole coast line, Mr. Palmer, from San Francisco to San Pedro, are you not? A. To San Diego.

Q. Now, I will show you Libelants' Palmer Exhibit 1—by the way, Mr. Palmer, you have testified that the beach there at Point Arguello is rocky?

A. Yes, sir.

Q. You have testified that there are three rocks off Point [177—25] Arguello that are always to be seen by passing vessels? A. Yes, sir.

Q. Did you see them on this occasion?

A. No, sir.

Q. Not on this occasion? A. No, sir.

Q. But on other occasions you have seen them, have you? A. Yes, sir.

Q. What is the difference between the coast line at Point Arguello and other places along the coast there for four or five or six miles each way?

A. Four or five or six miles away is more sandy beach.

Q. Up towards Surf is very sandy, is it not?

A. To the southern part of Rocky Point?

Q. From Point Arguello north to Surf it gets more sandy, does it not, the closer you get to Surf?

A. Not on the point.

(Testimony of F. G. Palmer.)

Q. But the closer you get to Surf in a northerly direction it gets more sandy?

A. I do not know Surf.

Q. Now, Surf on this map is sandy.

A. I do not know Surf at all.

Q. Just look at the map here. Do you remember where the "Santa Rosa" went ashore some years ago?

A. Yes, sir.

Q. That is at Surf?

A. Yes, sir, that is Santa Ynez. I do not know that place; we go by rocks and points. The ships do not come close to Santa Ynez, they have no business there.

Q. But the further north you go it gets sandy, does it not, this beach line is sandy?

A. It is rocks and sand.

Q. As a matter of fact, is it not all sand in there?

A. I do not know how this beach runs, we are too far off.

Q. But you do know at Point Arguello it is a rocky bluff beach [178—26] there.

A. It is a rocky beach and rocks out in the water.

Q. Would you say that Point Arguello is as dangerous as Point Conception?

A. It is more dangerous. It is pointing out more.

Q. It runs further out in the water?

A. Yes, sir.

Q. Point Arguello is more dangerous than Point Conception? A. Yes, sir.

Q. Is Point Arguello more dangerous than Point Purisima? A. Yes, sir.

(Testimony of F. G. Palmer.)

Q. If a vessel is broken down a mile and a half from Purisima, or a mile and a half from Point Arguello, what is the more dangerous place?

A. Point Arguello.

Q. Why? A. It is more steeper and rocks.

Q. Would you say that Point Purisima is more dangerous than Point Sal?

A. No, Point Sal is more dangerous.

Q. Why?

A. Because the ship has its regular course and never steers in this point at all.

Q. That is Point Purisima?

A. The ships never go to Point Purisima; they go from Point Arguello to Port San Luis. The smaller ones do, but the bigger vessels steer right up to Port San Luis.

Q. Is Port San Luis a dangerous point?

A. Yes, sir.

Q. Is Point San Luis more dangerous than Point Arguello? A. If the vessels have to go in.

Q. If the vessel does not have to go in?

A. She would keep further off.

Q. Suppose she does keep far off, take vessels like the "Roanoke" or the "Santa Clara"?

A. They are close sailing vessels. [179—27]

Q. They hug the shore in their regular pathway?

A. Yes, sir.

Q. And for vessels in their regular pathway which is the most dangerous point on the coast of California. A. The point sticking out more.

Q. I say, if they keep off that point the regular

(Testimony of F. G. Palmer.)

distance where is the most dangerous place on this coast from San Francisco to San Pedro, the most dangerous place on the whole coast line. As a seaman I want you to tell me.

A. I think Point Arguello is one of the most dangerous points.

Q. Which is the most dangerous?

Mr. WALL.—He said Point Arguello is one of the most dangerous places.

Mr. SOOY.—Q. I want to get his idea of the most dangerous place on this coast?

Mr. WALL.—From San Francisco to San Pedro?

Mr. SOOY.—Q. Yes.

A. Point Conception is a bad point.

Q. That is the worse?

Mr. WALL.—He says it is a bad point.

A. The ships have to look out for it; in fact, they have to look out all the time.

Q. As a matter of fact, you have to look out for all of them up and down. A. Yes, sir.

Q. One place is as bad as another if you once get on shore?

A. No, sir, some places are better, better beaches.

Q. At Surf, as a matter of fact, there is nothing there but sand? A. Point Surf?

Q. Yes. A. I never seen it.

Q. You know where the "Santa Rosa" went ashore? A. Yes, sir.

Q. There is nothing but sand there?

A. I don't remember what [180—28] is there.

Q. There is nothing but sand at Surf.

(Testimony of F. G. Palmer.)

Mr. WALL.—He says he never saw it.

A. No ships go in there.

Mr. SOOY.—Q. Would you say that if the “Roanoke” had gone ashore at Point Arguello that you would have a better opportunity to save the vessel than you would have if she went ashore at Surf?

A. No, sir, I would say she has more chance at Surf than she has at Point Arguello.

Q. Would you say you had a better chance of saving the “Roanoke” if she went ashore right off the Cliff House here, that is, below the Cliff House—say between the Cliff House and 16 mile rock on that sandy beach there, would you say that you had a better chance of saving the vessel if she went on shore at Point Arguello than at the Cliff House?

A. Yes, sir, she had assistance close.

Mr. WALL.—Q. At which place is assistance near? A. At this point, Cliff House.

Mr. SOOY.—Q. Assuming that the “Roanoke” went ashore just below the Cliff House on that sandy beach could you get her off easier there than you could off Point Arguello?

A. It depends if she went on the sandy beach or went on the rocks.

Q. I say suppose she went on that sandy beach there, just say a mile below the Cliff House she went on that sandy beach, would you say that would have been a better chance of recovering the vessel there than if she went down off Point Arguello?

A. Yes, sir.

Q. Why?

(Testimony of F. G. Palmer.)

A. Because the vessel lays on the sandy beach. It depends how long she lays on that sand, if she lays too [181—29] long they are unable to tow her off and she will sink as there is a lot of quicksand. Here alongside of 20 minutes you could get towboats, wrecking boats and everything. To save a vessel at Point Arguello they will have to send a wrecking ship out from Frisco and that will take a day, and if it is blowing it will take more than a day. In that time she could sink in the sand.

Q. Leaving out the question of assistance, if you owned the "Roanoke" would you rather have her go ashore on Point Arguello or would you rather have her go ashore a mile below the Cliff House?

A. I would not have her going ashore at all.

Q. If you had one of the two places to have that vessel go ashore where would you rather have her go ashore, leaving out the question of assistance; which would be the hardest place to get her off?

A. I told you Point Arguello.

Q. Point Arguello is the hardest place to take her off? A. Yes, sir.

Q. Then your testimony is that Point Arguello is the most dangerous point on the coast?

A. It is the most dangerous point on the coast. It is dangerous as many other points.

Q. Is it any more dangerous than a dozen other places on this coast?

A. It is as dangerous as some points.

Q. Aren't there several other points that are just as dangerous as Point Arguello? A. Yes, sir.

(Testimony of F. G. Palmer.)

Q. So that Point Arguello is not any more dangerous than several other points on the coast, is it, Mr. Palmer? A. It is just as dangerous.

Q. Just about? A. Yes, sir.

Q. And no worse than any of the others if you keep off that [182—30] point?

A. It is not dangerous at all if a ship keeps off.

Q. If you keep off three-quarters of a mile off of that point you are in no danger, are you?

A. Three-quarters of a mile is dangerous.

Q. How far off that point must you keep?

A. There is close going vessels that keep off a mile and a quarter and a mile and a half.

Q. But if you get inside of that distance then you think it is dangerous, do you? A. Yes, sir.

Q. As a matter of fact, can't you run within one-quarter of a mile of that point? A. I have.

Q. You have been within one-quarter of a mile of that point?

A. Yes, sir, if you get it in sight, if you can see it.

Q. I see; if you can see the point you can run within one-quarter of a mile of the point, can't you?

A. Off the point.

Q. Off the point, yes.

A. Not a quarter of a mile.

Q. You can run within one-quarter of a mile of Point Arguello and not be in any danger if you can see the point?

A. No, sir, there is rocks within one-quarter of a mile.

Q. You can run within one-quarter of a mile?

(Testimony of F. G. Palmer.)

A. It all depends on the draft of the vessel.

Q. Can't you run within one-quarter of a mile?

A. Outside of the rocks.

Q. If you can see the point? A. Yes, sir.

Q. But in thick fog—in foggy weather it is not safe to run within a mile and a quarter?

A. No, sir, it is not.

Q. Because you cannot see the point?

A. Yes, sir.

Q. Now, at the time that you were on the "Santa Clara" you knew that both the "Santa Clara" and the "Roanoke" belonged to the North Pacific Steamship Company, Mr. Doe's company, [183—31] did you not? A. Yes, sir.

Q. And you felt that it was your duty to go to the assistance of the "Roanoke," did you not?

A. I felt it was my duty?

Q. Yes.

A. Well, if the captain steers the ship there we all have to go.

Q. I understand. But you felt it was your duty, did you not, to go?

A. It is always the duty of a man to help another.

Q. It is customary among shipping men, ship owners for one vessel to help the other rather than to have a tugboat? A. Yes, sir.

Q. In other words, if one company owns two vessels that are plying between Gray's Harbor and San Francisco, for instance, or any other place along the coast and one of those vessels is in distress through any cause of any kind, rather than get a tugboat

(Testimony of F. G. Palmer.)

the company sends the other vessel to the assistance of the one in distress, does it not?

Mr. WALL.—I will object to that question, as the law covers all such cases and provides specifically that in case of salvage that there is no way that the seaman can be deprived of his right of salvage, and that it is useless to attempt to prove a custom contrary to the law.

Mr. SOOY.—Q. Read the question, Mr. Reporter.

(The Reporter reads the question.)

Q. That is the custom along the coast, is it not, Mr. Palmer, for a company to send one of its own vessels to assist the vessel in distress?

Mr. WALL.—Q. If he knows.

A. It is; if there is danger they take help from any vessel coming and they have to pay salvage.

Mr. SOOY.—Q. The company always sends one of its own [184—32] vessels to the assistance of the other vessel?

Mr. WALL.—The same objection.

Mr. SOOY.—Yes.

A. Yes, sir.

Q. The company owning several vessels always sends one of its own vessels to assist the vessel in distress rather than get a tugboat? A. Yes, sir.

Q. Why is it done, if you know?

A. I can tell you right here. If a tugboat of another company salvages that vessel they would have to pay at least half of the worth of that vessel to the tugboat, and they would rather pay a little salvage to the crew of their own vessels than pay 50 per cent

(Testimony of F. G. Palmer.)

of the worth of the ship to the other company. I do not know the percentage, but I guess Mr. Wall knows that.

Q. That is the reason why it is?

A. Sure, to save money; that is the only reason.

Q. At the time that you performed this rescue, or salvage upon the "Roanoke" as you call it, the alleged salvage, you expected to have a salvage case against the "Roanoke," did you? A. Yes, sir.

Q. You expected that at that time?

A. Yes, sir.

Q. Did you talk it over among the crew prior to the time that you had the line bent on the "Roanoke"?

A. We certainly did talk it over and agree.

Q. Before you had the line bent on did you talk it over?

A. We talked it over on the boat; we all said, well there is a little money in it for us right here because the law gives it to us.

Q. Before you bent the line on the "Roanoke" did you have any talk about what you were going to claim against the "Roanoke"? [185—33]

A. Well, the crew says it is a little easy money for us right here.

Q. You said that is a little easy money for you?

A. Yes, sir.

Q. Did any of the members of the crew on towing this "Roanoke" perform any duties that they did not perform on any other trip and on the towage?

A. Yes, sir.

(Testimony of F. G. Palmer.)

Q. What other duties did they perform?

A. Taking that line on board and lashing it. The watchman, for instance, had to watch that line all night so if it carries away to keep any of the passengers from getting hurt. If that line carries away and anybody happens to be there it would not kill him but take a leg off him.

Q. What other duties did they do besides the watchman who was attending to this line, and taking turns around the bitt and putting it in the chocks or the mast of the "Santa Clara." Did they do anything else? A. They were all there.

Q. Did they do anything else?

A. That is all they had to do.

Q. Did the crew turn in and take this rest the same as you did? A. Yes, sir, they turned in.

Q. You were not up at night or called from your warm beds in the night, were you?

A. Except the lookout at the wheel.

Q. None of the crew had to get out of their beds at all? A. No, sir.

Q. There is always a watchman on board?

A. Yes, sir.

Q. So that he did not have to do anything else but keep his eye on the line? A. Yes, sir.

Q. He had to keep his eye on the rest of the vessel, did he not? A. Yes, sir.

Q. So that he did not have anything else to look out for [186—34] but this line once in a while. That is the only extraordinary duty he had?

A. He had another thing to do; he had to go into

(Testimony of F. G. Palmer.)

the foremast rigging and put up another light to show we had a vessel in tow.

Q. He had to rig up a towing light?

A. Yes, sir, that is what we call it.

Q. To show that you had another vessel in tow?

A. Yes, sir.

Q. Did you have any difficulty in towing the "Roanoke"?

A. We did not have no difficulty in towing her except we could not make the speed we would make without towing her; it was a little bit harder for her.

Q. How far off Port Harford did you go backwards and forward there waiting to go into the port?

A. Four or five miles.

Q. You did not get closer to Port Harford than four or five miles, did you?

A. Not before we were ready to go in.

Q. Could you see the shore from where you were?

A. No, sir, it was foggy.

Q. And how close to the shore were you when you first saw the shore?

A. I was not on deck when they saw the shore first.

Q. You are one of the Libelants here, one of the men that libeled the "Roanoke"? A. Yes, sir.

Q. Are you employed by the North Pacific Steamship Company now, Mr. Palmer? A. Not now.

Q. When did you quit the "Santa Clara"?

A. I quit at the same time.

Q. At the same time you libeled her?

A. Yes, sir.

(Testimony of F. G. Palmer.)

Q. Why did you not go on working in her?

A. Well, I did not like the kind of work. [187—
35]

Q. You did not like the kind of work?

A. Too hard work.

Q. What is hard about it?

A. Bad grub and bad fore-castle, and I had a chance for a better vessel.

Q. What vessel do you go on now?

A. The "Governor." I left her to-day, though; I am not on her any more.

Q. You are not on her? A. No, sir.

Q. Have you any enmity towards Mr. Doe?

A. No, sir.

Q. Do you like him?

A. I do not, no; I have nothing to like him for and I have nothing to hate him for except I think he is a little cheap.

Q. You would like to see him be made to pay heavily?

A. He ought to be made pay those moneys out.

Q. You think he is a little cheap and he ought to be made to pay?

A. Certainly, he ought to settle with us without all this suit. He ought to say, here, boys, it is coming to you, and give it to us.

Redirect Examination.

Mr. WALL.—Q. In running up and down the coast south of San Francisco, vessels of the character of the "Santa Clara" navigate along the coast from

(Testimony of F. G. Palmer.)

one light-house point to the next light-house point, do they not?

A. Not always; generally bigger vessels jump to the next point sticking out.

Q. Vessels of the character of the "Roanoke" and the "Santa Clara" coming out of Santa Barbara Channel would run how close to Point Conception light under fair weather? A. About a mile.

Q. And from there they shape their course to pass how far from Point Arguello?

A. A mile and a quarter to a mile and a half.

Q. From Point Arguello vessels of that character, of the [188—36] character of the "Santa Clara" and the "Roanoke" bound for San Francisco shape their course for what point, the next point?

A. You mean not calling in any port?

Q. Not calling in any port bound for San Francisco? A. Small vessels head for—

Q. (Intg.) I am talking of vessels of the character of the "Santa Clara" and the "Roanoke"?

A. Point Buchon.

Q. If they were bound for San Luis Obispo what would be the next point they would shape their course for after Point Arguello? A. Point Sal.

Q. So then, in going from Point Arguello to Point San Luis Obispo you leave Surf well off to your right-hand side? A. Yes, sir.

Q. You cannot see the character of the beach at Surf? A. No, sir.

Q. Now, vessels anchoring in San Francisco Harbor have a certain anchorage ground, have they not?

(Testimony of F. G. Palmer.)

A. Yes, sir.

Q. And they are not allowed to anchor outside of that ground? A. No, sir.

Q. Do you know the character of the bottom of the ground of vessels anchoring in San Francisco Bay?

A. It is muddy ground.

Q. Is it considered good holding ground?

A. Very good holding ground; blue clay.

Q. Now, you did not take any soundings where the "Roanoke" was? A. No, sir.

Q. You did not see anybody else take any soundings? A. No, sir.

Q. So of your own knowledge you don't know how much water the "Roanoke" was anchored in?

A. No, sir. [189—37]

Q. When you say from 60 feet to 100 feet it was just a guess on your part? A. Yes, sir.

Q. Did you see the coast, or any part of the coast line at any time while you were handling the "Roanoke"? A. No, sir.

Q. Then your estimate of the distance that the "Roanoke" was from the coast is merely your judgment in the matter? A. Yes, sir.

Q. And what guided you in your judgment?

A. The steam whistle.

Q. The steam whistle of the light-house?

A. Yes, sir, and the whistle of the "Roanoke."

Q. How would the whistle of the "Roanoke" help you in telling how far the "Roanoke" was from the coast? A. It can't help us any.

Q. How did you arrive at the conclusion that the

(Testimony of F. G. Palmer.)

“Roanoke” was a mile or a mile and a half from Point Arguello? A. By our own vessel.

Q. How did you estimate that the nearest point the “Roanoke” was from the shore was a half or three-quarters of a mile?

A. By the sound of the whistle off Point Arguello.

Q. So that you thought the “Roanoke” was about one-half or three-quarters of a mile from Point Arguello? A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. But you have not any exact information as to the exact position of the “Roanoke” either from Point Arguello or from any other point on the coast?

A. No, sir.

Q. Could you hear any part of the surf while you were there? A. Very distinctly.

Q. You could?

A. That is what I judged the distance, by the land. You could hear it so very plainly and it seemed to [190—38] be running a pretty good swell by the sound of the surf.

Q. Counsel asked you whether if you owned the “Roanoke” you would rather have her go ashore south of the entrance to San Francisco, or Point Arguello? Now, if for any reason the “Roanoke” had dragged on the shore at Point Arguello and been impaled on any of those rocks there it would have been practically an impossibility to get her off, would it not? A. It depends on the weather.

Q. How do you mean it depends on the weather?

Mr. SOOY.—We object to that, Mr. Wall, on the

(Testimony of F. G. Palmer.)

ground it is incompetent, irrelevant and immaterial, and that it calls for expert testimony, and no foundation has been laid for it.

Mr. WALL.—Have the record show that the other side made the witness a witness of their own on this.

Mr. SOOY.—The cross-examination of the witness was merely for the purpose of getting at the witness' idea of coast line and the dangerous coast generally; it did not attempt to qualify the witness or get the witness' opinion as to how he would take the vessel on or off.

Mr. WALL.—Q. If a vessel like the "Roanoke" had gone on the beach at Point Arguello on the rocks, and the same vessel had gone on the sand beach south of San Francisco which position would be the more dangerous, leaving out the question of the assistance they could get also?

Mr. SOOY.—The same objection, it is assuming something not in evidence.

A. The rocky beach at Point Arguello.

Mr. WALL.—Q. You have never been inshore there where [191—39] the "Roanoke" was at anchor yourself, have you, never been inshore of her?

A. No, sir, never have been any closer before.

Q. So of your own knowledge you do not know what the condition of the bottom was inside of the "Roanoke"? A. No, sir.

Q. Of your own knowledge you do not know what the depth of the water was inside of the "Roanoke"? What the depth of the water was between the

(Testimony of F. G. Palmer.)

“Roanoke” and the shore? A. No, sir.

Q. Now, a vessel in San Francisco Bay—a vessel making a short voyage will not get out of her course as quickly as a vessel making a long voyage?

A. Yes, sir.

Q. Vessels running down the coast in foggy weather, what is the fact of their being likely to get out of their course? A. Very easy.

Q. What effect, if any, would the current have?

A. Currents have the effect that nobody knows at times and bad steering.

Q. I will ask you as a seaman whether it is not practically impossible for any vessel traveling in a fog to make an exact course over a course of 40 miles. Is it not practically impossible to make an exact course in the fog over a course of 40 miles?

A. You cannot even do it in 10 miles.

Mr. WALL.—That is all.

Recross-examination.

Mr. SOOY.—Q. Then if a vessel were anchored in the fog in the pathway of other vessels they are just as liable to hit her as they are liable to miss her?

A. What did you say?

Q. I say, suppose a vessel is anchored in the fog in the pathway of other vessels, those vessels then that are coming up and [192—40] down are just as liable to pass this vessel as they are to hit her?

A. I do not understand.

Q. I say, if you cannot steer a straight course you could not keep right in your pathway?

(Testimony of F. G. Palmer.)

A. No vessel can steer a straight course.

Q. Say the line of this table here is the regular pathway of vessels and there is a vessel anchored right in that pathway of vessels coming up and down, if they cannot steer a straight course and cannot keep in that pathway they are just as liable to miss that vessel as to hit her, in the fog?

A. They are liable to get more offshore, or more inshore.

Q. So that you would say she would be in less danger because she was anchored in the fair way than if she was anchored outside, would you not?

A. I would not; she certainly would be bound to be in danger being off as in.

Q. I am saying she was anchored there right in the pathway in foggy weather.

Mr. WALL.—I object to that unless the question is made more definite than that. It is not shown that there was any vessel in the place she ought to be and as a matter of fact there is a proper place where she ought to be.

Mr. SOOY.—Q. Assume the vessel is where she ought to be in the regular pathway of vessel coming in and going down, it is very foggy weather and the vessels coming in and going down cannot steer a straight course in foggy weather, so they would miss that vessel if they cannot keep their course?

Mr. WALL.—I object to that question; counsel can tell that just as well as the witness and the Court can tell it just as well as counsel or the witness.

(Testimony of F. G. Palmer.)

Mr. SOOY.—I want to get the witness' idea. [193—41]

Mr. WALL.—The idea of the witness is immaterial. Counsel knows it just as well as the witness and the witness and everybody knows it just as well as anybody of any reasoning faculty.

Mr. SOOY.—Q. Answer the question.

A. Well, I told you already it has a course outside of the ship. The ship is laying inside the straight course if the other ship is outside that ship.

Q. I am not assuming that the vessel is not inside. What I am saying—now, say the “Governor,” for instance, breaks her tail shaft and she anchors right on her regular run in the pathway of the vessels coming up and down the coast in the fog; now, you say a vessel cannot keep on her course in the fog for 10 miles? A. No, sir, she cannot do it.

Q. Then the vessels coming up and down would be more liable to miss the “Governor” than to hit her?

A. They are just as liable to hit her as to miss her.

Q. Are not the chances reduced?

A. Just the same.

Q. You have one-half a mile on one side of her and the whole Pacific Ocean on the other side of her?

A. Yes, sir.

Q. If she is lying end on to these vessels you have only got 35 or 40 feet. Now, you say the vessel is just as liable to run in that 35 feet or on the whole ocean on the other side?

A. I say it is just as liable to hit her as to miss her.

Q. Just the same? A. Just the same.

(Testimony of F. G. Palmer.)

Q. You mean now to say—here is 35 feet of vessel, you have got to come in that 35 feet to hit her?

A. 35 feet of vessel.

Q. How wide is the vessel?

A. It might be you do not hit her on the bow or stern, you might hit her in the side. [194—42]

Q. Suppose she is lying side on to you. How long is the “Santa Clara” or the “Roanoke”?

A. About 350.

Q. Then you have got here this 350 feet to hit her?

A. Yes, sir.

Q. You have got the whole Pacific Ocean on the other side?

A. The ship does not steer in the whole Pacific Ocean.

Q. You have got that on that side?

A. Yes, sir.

Q. And you have got one-quarter of a mile inside?

A. Yes, sir.

Q. Then you mean to tell me there is as much chance in hitting that vessel as missing her?

A. Yes, sir, certainly.

Q. I do not want to argue with the witness. Let me make this clear to you. You know some mathematics, don't you? A. Yes, sir.

Q. Now, here is the pathway of the vessel. Just assume this rough diagram here is the whole Pacific coast here. Here is a mile and a half to the coast in there. Now, then, a vessel coming down here has got to get—this would be the size of the vessel, 300 feet. That vessel has got to hit that 300 feet, has it not?

(Testimony of F. G. Palmer.)

A. Yes, sir.

Q. In order to hit that vessel? A. Yes, sir.

Q. What about this 300 feet, this 300 feet, this 300 feet, and that 300 feet and so forth out here?

A. No, sir, except that the quartermaster at the wheel gets steering bad to the inside she will either hit the vessel or shore and steering on the outside she will get to Honolulu. She does not steer that course all the time.

Q. She keeps this 300 feet of her course?

A. No, sir, it all depends on the distance.

Q. Suppose the vessel is half a mile outside the course? [195—43]

A. Another vessel running wild one-half mile off her course too?

Q. This vessel one-half mile off her course would be hit by this vessel running wild?

A. No, sir. That man lets her run out and another fellow comes and lets her run inside.

Q. But if a vessel comes one-half mile off her course off Point Arguello, then you would say she would not be on her course, would you?

A. One-half of a mile, that is not very much. It all depends how far you are running. One-half a mile is not very much in a run of 40 or 50 miles.

Q. If a vessel is one-half a mile off her course you would say that is not very good steering?

A. What distance?

Q. Say going from here to San Diego she got off Point Arguello she was one-half mile inside of her

(Testimony of F. G. Palmer.)

course, would you say that was good steering?

A. Good steering, it is very good.

Q. If a vessel is within three-quarters of a mile of Point Arguello, would you say that is good steering?

A. If inside Point Arguello three-quarters of a mile and running it would be running on shore.

Q. I say three-quarters of a mile off, is that good seamanship? A. No, sir, one mile and a quarter.

Q. If a vessel is within three-quarters of a mile, that is she is three-quarters of a mile off Point Arguello, she is out of her course, is she not?

A. A little.

Q. Out of the course of other vessels?

A. Yes, sir.

Q. She is one-half a mile out of the course of other vessels passing up and down, is she not?

A. Yes, sir.

Mr. WALL.—Q. When you spoke of the track of vessels going up and down the coast, the track of vessels depends upon the depth of the vessel, does it not?

A. The draft of the [196—44] vessel.

Q. And the path of vessels going up and down the coast is not a narrow line, is it? A. No, sir.

Q. It extends over a considerable distance?

A. To the outside.

Q. And varies a good deal upon the individual navigator of each vessel? A. Yes, sir.

Q. Some masters stand well in and some stand out?

Mr. SOOY.—Objected to as leading and not

(Testimony of F. G. Palmer.)

proper redirect examination.

Mr. WALL.—The form of the question may be leading. I will withdraw it, the form of the question and get the same thing in this way.

Q. State what the custom is in regard to navigating up and down the coast as to different captains of different ships and the different drafts of different vessels.

A. The usual master wants a man to steer outside a while and then go inside a while. The captain is not running the steering, the mate and quartermaster is steering; and you have mates running everything inside, they are scared; then you have mates running everything outside, they are offshore. There are some who want to see the land. You have some mates running everything outside, and I had it happen once when we were off Point Reyes coming down from Eureka inshore he was six miles outside of us. That is one kind of mate. The other kind of mate is more careful, he don't care how much he goes out to sea and only starts to go inshore when he nears his destination.

Q. As to the draft, what effect does that have in keeping [197—45] inshore or offshore?

A. There is parts along the coast—there are places all along the coast that are not deep enough for vessels to pass all outside of four miles channel. A vessel of 30 feet cannot go there, but a vessel of 20 feet can.

Q. If there is no fog and the points are clearly visible, state what use, if any, those points can be

(Testimony of F. G. Palmer.)

made use of in steering.

A. They use the points to hold her in or out; if she is steering too far off they hold her in.

Mr. SOOY.—Q. Would you say that a vessel one-half of a mile of Point Arguello is in the regular pathway of vessels? A. No, sir, she is inside.

Q. She is three-quarters of a mile inside of the regular pathway? A. Yes, sir.

Q. In other words, vessels keep out a mile and a quarter or a mile and one-half of Point Arguello, do they not? A. Yes, sir.

Mr. WALL.—Q. That is, they aim to keep that distance off in good weather?

A. That is their aim, but they cannot do it.

Mr. SOOY.—Q. They are supposed to keep off that far? A. Yes, sir.

Q. Good seamanship would require it?

A. It might be a good seaman—he might get farther in and he might get farther out.

Mr. SOOY.—That is all. [198—46]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, Francis Krull, a United States Commissioner for the Northern District of California, do hereby certify that pursuant to the order of reference made to take and report the testimony herein that on Monday, July 14th, 1913, I was attended by F. R. Wall, Esq., proctor for the libelant and C. H. Sooy, Esq., proctor for claimant, and by the witness F. G.

Palmer, who was of sound mind and lawful age, and that the said witness was by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in said cause; that the foregoing testimony was taken in shorthand by Herbert Bennett, a competent stenographer, and afterwards reduced to typewriting, pursuant to such order of reference.

In witness whereof, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 15th day of July, 1913.

FRANCIS KRULL,

U. S. Commissioner, Northern District of California,
at San Francisco.

[Endorsed]: Filed Sept. 15, 1913. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [199—
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*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

OSKAR JOHANSEN et als.,

Libelants,

vs.

The Steamer "ROANOKE," etc.,

Claimant.

Thursday, August 21st, 1913.

TESTIMONY TAKEN ON REFERENCE BEFORE FRANCIS KRULL, U. S. COMMISSIONER.

APPEARANCES.

F. R. WALL, Esq., for the Libelants.

DAVID LEVY, Esq., for the Respondent.

[200—1]

[Testimony of Richard Dickson, for Libelants.]

RICHARD DICKSON, called for the libelants, sworn.

Mr. WALL.—Q. Captain, what is your business or occupation? A. I am a seafaring man.

Q. You were such on the 10th of April last?

A. Yes, sir.

Q. In what capacity were you engaged at that time? A. Master of the steamer “Roanoke.”

Q. When you were subpoenaed, Captain, you were subpoenaed to bring with you the ship’s log and the official log of the “Roanoke” covering the 10th day of April, 1913? A. Yes, sir.

Q. Have you those with you? A. I have.

Q. Let me see the ship’s log first?

A. This is the official log and that is the pilot-house log (indicating).

Q. Captain, I find an entry in the pilot-house log-book under date of April 10th, 1913, arrived 10:05; is that 10:05 in the morning?

A. That is 10:05 in the morning; forenoon.

Q. “Ship stopped, propeller or some blade off propeller gone.” I will ask you if you found out what

(Testimony of Richard Dickson.)

blade of the propeller was gone.

Mr. LEVY.—Objected to on the ground no proper foundation is laid.

Mr. WALL.—Q. Go ahead and answer it subject to the objection.

A. I found out that the tail shaft was gone; the tail shaft was broken, and also two blades of the propeller.

Q. Just explain briefly and fully so the Court will understand what is meant by the tail shaft.

A. The tail shaft is what drives the propeller; the shaft that goes from the engine to the propeller through a big [201—2] tube through the stern of the ship; the shaft was 15 inches in diameter and it drives the propeller which drives the ship.

Q. You say that you found the tail shaft was gone?

A. Yes, sir.

Q. How did you find that?

A. Seeing the propeller was pulled out of the stern tube and up against the rudder-post.

Q. And when the propeller was pulled out of the stern tube and up against the rudder-post how much room was there then between the tail shaft and the tube?

A. There was no room because the tail shaft was broken in the stern tube between the first and second line up.

Q. The tail shaft turns around in the stern tube, does it not? A. Yes, sir.

Q. There would have to be some room in order for it to turn around; it did not fit in there tight?

(Testimony of Richard Dickson.)

A. It never fits tight; there is a gland from the outside and one from the inside which keeps the water from going through; the tail shaft was right in between, what we call in between the two liners.

Q. How far abaft was the tail shaft pushed after you found it out from its original position?

A. That I do not recall; it was pulled right up against the rudder-post, tight.

Mr. LEVY.—Q. Did you see all these things?

A. I did, looking over the stern of the ship down to the water; the water was kind of clear and I could see the propeller was up against the stern or the rudder-post; that I knew then that the shaft was gone.

Mr. WALL.—Q. After you discovered that what did you do with the “Roanoke”?

A. We lay adrift there until we got an anchorage and dropped [202—3] anchor in 15 fathoms of water, or about 14½ or 15 fathoms of water to the best of my recollection.

Q. The entry in the log-book is “dropped anchor in 14½ fathoms of water”? A. Yes, sir.

Q. Were there any soundings taken?

A. Yes, sir, with the main lead line.

Q. And it was between 14 and 15 fathoms of water where you anchored?

A. Where we anchored after we drifted in there.

Q. And the position at noon according to the entry; what is that?

A. 1½ miles south southwest of Point Arguello.

Q. Now, was that bearing by compass magnetic or true?

(Testimony of Richard Dickson.)

A. The second officer said he seen the light-house; I did not see that myself; it was a foggy day, very thick.

Q. What I mean, was the entry in the log-book here—

A. (Intg.) That was by magnetic bearing.

Q. The entry of 11½ miles south southwest of Point Arguello, the south southwest would be a magnetic bearing? A. Yes, sir.

Q. And not a true bearing?

A. Not a true bearing; two degrees to the best of my recollection; two degrees westerly deviation of that compass.

Q. Do you mean two degrees or two points?

A. Two degrees.

Q. Westerly deviation? A. Yes, sir.

Q. Do you know how much variation?

A. Variation down there to the best of my recollection is somewhere around 17 degrees, between 16 and 17 but I am not positive of that now.

Q. I will read this entry in the log-book Captain so that you can testify intelligibly in regard to it. 10:30, that is [203—4] in the forenoon, is it?

A. Yes, sir.

Q. “Lowered boat, found two blades of propeller gone and shaft damaged. 11:10 dropped anchor in 4½ fathoms of water. 60 fathoms of chain. Position at noon, 11½ M. S. S. W. of Pt. Arguello. 4:45,” that is in the afternoon, is it not, Captain?

A. Yes, sir.

Q. “4:45 S. S. ‘Santa Clara’ arrived. 5:20 anchor

(Testimony of Richard Dickson.)

up proceeded in tow of 'Santa Clara.' " You say you did not yourself at any time see the light-house on Point Arguello? A. I did not.

Q. What prevented you from seeing it?

A. The fog. Pardon me, I see the light before we broke the propeller probably about eight or 10 miles south of Arguello, but not after we broke the propeller; it cleared up, that was before we broke the propeller.

Q. That was before you broke the propeller?

A. Yes, sir.

Q. That was all on the 10th of April?

A. On the 10th of April to the best of my recollection.

Q. I will show you the log-book for April 10th, 1913, the entry opposite 10 o'clock running over in one of the columns to the right is entered fog, what was the condition of the fog at that time?

A. It was thick fog.

Q. Thick fog at 10 o'clock at that time? The entry above at 1:41 A. M., is also an entry of fog?

A. That is the time the fog begun.

Q. That is the time the fog began?

A. And stayed with us all night until about 8:12 in the morning, and she lighted then; that is the time we saw everything, Point Arguello light-house, saw it for about 20 minutes, then the fog bank shut in again and from that I did not see it. [204—5]

Q. Captain, in the last column, April 10th, 1913, opposite the entry 11:10, I will ask you to read what that entry is there? A. Light westerly swell.

(Testimony of Richard Dickson.)

Q. Light westerly swell?

A. Yes sir, that is light westerly swell.

Q. That means that the swell was setting towards the westward? A. Coming in from the westward.

Q. And setting towards the eastward?

A. Yes, sir.

Q. And the same entry down here 7:40?

A. That was the same thing, I think.

Q. That is the same entry?

A. No, sir, light northwest swell.

Q. That means the swell was coming from the northwest and setting to the southeast?

A. Yes, sir.

Q. And down here of midnight of that day, gentle westerly swell? A. Yes, sir.

Q. That was midnight of the 10th? A. Yes, sir.

Q. And the entry on the 10th opposite 11:10 A. M., under the head "wind," is marked as Z?

A. That is calm, no wind.

Q. That means calm? A. Yes, sir.

Q. Is this the official log? A. Yes, sir.

Q. The entry in the rough log that you have been testifying from as the rough log is kept in the pilot-house?

A. Yes, sir, and this is what we call the official log.

Q. This is written up by the first officer on the ship?

A. Every day from the pilot-house log-book entry.

Mr. LEVY.—Q. The man that writes up this log-book does not necessarily—

Mr. WALL.—That is cross-examination.

(Testimony of Richard Dickson.)

Q. I show you the book in regard to which you have been [205—6] testifying, the last book that you have been testifying to and what you call the official log-book; is that correct?

A. That is the only log-book that I know of aboard the ship.

Q. Where did you get this book that you call the official log-book; when you brought it up here where did you get it? A. On board the ship.

Q. What ship? A. "Roanoke."

Q. Where did you find it, where was it?

A. In the mate's room; I sign it every day and look it over.

Q. When you brought it up here to-day you found it in the mate's room? A. Not to-day.

Q. When?

A. When I was subpoenaed that time.

Q. When you got the subpoena you went into the mate's room and got this book? A. Yes, sir.

Q. And it has been in your custody since that time? A. No, sir.

Q. Where has it been?

A. I took it to the attorneys.

Q. That day? A. Yes, sir.

Q. And left it with them? A. Yes, sir.

Q. Has it been there since that time?

A. Yes, sir.

Q. Where did you get it to-day when you brought it out here? A. At the attorneys.

Q. I will ask you if as master of the vessel you looked it over every day?

(Testimony of Richard Dickson.)

A. Every day we look that book over.

Q. The master does?

A. Yes, sir, to see if the entries is correct, or not.

Q. Captain, I will ask you to read the entries in this book beginning with the entry opposite 10:05

A. M. on Thursday, April 10th, 1913, down to and including the entry which I [206—7] indicate to you with my finger; all of the entries in the log-book?

Mr. LEVY.—I shall object to an answer being given to that question or to the captain reading from that book, and I claim the right to cross-examine this witness in order to lay a foundation for my objection.

The COMMISSIONER.—Let the question be answered; you have entered your objection and you can cross-examine the witness after Mr. Wall gets through with his examination.

Mr. LEVY.—I take an exception to the ruling on the ground I have had no opportunity to bring out the facts regarding this book so that my objection may have any foundation.

Mr. WALL.—Q. Answer the question subject to the objection.

A. "10:05 ship stopped. Propeller or some blades of propeller gone. Log in. 10:30 Lowered boat. Found shaft broken and two blades knocked off wheel. 11:30 dropped anchor in 14½ fathoms—60 fathoms chain. 12:00 position at noon 1½ S. S. W. of Pt. Arguello. 1:15 P. M. secured wheel by means of chains hove taut to waischocks. 4:45 S. S. Santa Clara arrived in response to wireless call. 5:20 up

(Testimony of Richard Dickson.)

anchor and proceeded in tow of S. S. Santa Clara. 5:45 course magnetic N. W. $\frac{1}{2}$ W. 5:45 Pt. Arguello whistle and log astream. 7:40 change courses N. N. W. 8:00 P. M. fog, calm, smooth."

Q. What is this indorsement there on the bottom, Captain? A. That is my name.

Q. R. Dickson, master? A. Yes, sir.

Q. That is, you looked it over and it met with your approval [207—8] and you signed it?

A. Yes, sir.

Q. Go ahead and read the afternoon entries.

A. This is the next day.

Q. The first entry on April 11th is 1 A. M.?

A. Yes, sir.

Q. April 11th, 1913? A. Yes, sir.

"1 A. M. courses N.N.W. 17 $\frac{1}{2}$ various courses, fog, calm, smooth. 4:00 A. M. drifting about off Port San Luis. 6:45 anchored at Port San Luis 10 fathoms. In hauling in tow line hawser fouled bottom, and when later the tug 'Sea Rover' attempted to recover same hawser carried away and 40 fathoms of 11 $\frac{1}{2}$ " wire cable was lost, as well as portion of hawser, and the part of hawser recovered was badly chafed by fouling rocks. Original length of hawser 120 fathoms. Capstan shaft broken heaving on wire cable. 10:30 tug 'Sea Rover' arrived port Bow bits cracked by wire cable. 2:00 P. M. up anchor and proceeded in tow of 'Sea Rover.' 2:15 whistling buoy abeam."—

Q. That is all I want. A. Yes, sir.

Mr. WALL.—I am going to offer in evidence, Mr.

(Testimony of Richard Dickson.)

Levy, as Libelants, Exhibit Dickson 1, the book that the captain testified as the official log so far as relative to the entry to be found therein under date of Thursday, April 10th, 1913, and Friday, April 11th, 1913, unless you want to stipulate that these entries—

Mr. LEVY.—Saving my objections already made and exceptions also, I will stipulate that what has been read is contained in the book which is referred to. I also make the objection to the introduction of this book and its contents upon the ground that it is irrelevant and immaterial and upon the further ground that I have not had [208—9] no opportunity to cross-examine the witness so as to bring out the character of the book.

Mr. WALL.—Q. Captain, you were also subpoenaed to bring certain originals of certain wireless messages received and sent by you; have you got those with you?

A. I turned them over to our attorney, Mr. Levy.

Q. I will show you, Captain, what purports to be certain wireless messages and will ask you to look them over and state whether or not you sent or received the messages therein referred to either as it appears or substantially as it appears. First, I call your attention to Libelants' Exhibit 1, and ask you if you sent substantially that message to Mr. Doe.

A. Yes, sir, to the best of my belief, I did; although I don't see where they get that 10.

Q. The wireless operator would put the time of sending it, would he not?

(Testimony of Richard Dickson.)

A. He ought to, but it does not seem he has there. The tail shaft was not broken until 10:05, and I would not send it before the tail shaft broke.

Q. I will show you Libelants' Exhibit 2, which purports to be to Doe, San Francisco, signed Dickson.

A. Yes, sir, I acknowledge that as having been sent by me.

Q. And one marked Libelants' Exhibit 3, in the corner. A. Yes, sir.

Q. You acknowledge that as sent by you?

A. Yes, sir.

Q. And the one marked No. 4? A. Yes, sir.

Q. And the one marked No. 5, purporting to be to Captain Jessen of the "Santa Clara" and signed by you?

A. There is a mistake there; it should have been three miles instead of two; that is another mistake of the wireless.

Q. It should have been three miles instead of two.
[209—10] A. Yes, sir.

Mr. LEVY.—Three miles what?

Mr. WALL.—Q. Three miles south.

A. To the best of my recollection I sent three instead of two.

Q. Otherwise you acknowledge the message substantially as it was sent? A. Yes, sir.

Q. And No. 6, which purports to be to you from Doe? A. Yes, sir.

Q. You acknowledge receiving that, do you?

A. Yes, sir.

(Testimony of Richard Dickson.)

Q. And No. 7, which purports to be to you from Doe? A. Yes, sir.

Q. You acknowledge receiving that from Doe?

A. Yes, sir.

Q. No. 8, which purports to be to Jessen from you?

A. Yes, sir.

Q. You acknowledge as having sent that?

A. Yes, sir.

Q. No. 9, which purports to be to Jessen from you?

A. Yes, sir, except that two miles; that is one thing that I do not remember saying.

Q. You think you said three instead of two?

A. Yes, sir, to the best of my belief I think I said three instead of two.

Q. No. 10, to Jessen from you? A. Yes, sir.

Q. You acknowledge as having sent that to Captain Jessen, do you? A. Yes, sir.

Q. And No. 11, to you from Jessen?

A. Yes, sir.

Q. You acknowledge receiving that?

A. Yes, sir.

Q. No. 14, purporting to be to you from Jessen?

A. Yes, sir.

Q. You acknowledge having received that?

A. Yes, sir.

Q. No. 18, purporting to be to you from Jessen?

[210—11] A. Yes, sir.

Q. You acknowledge having received that from Jessen? A. Yes, sir.

Q. Captain, what time did the "Santa Clara" pick up the "Roanoke"?

(Testimony of Richard Dickson.)

A. To the best of my belief she arrived there—to the best of my recollection she arrived there at 4:45 by our time.

Q. In the afternoon? A. Yes, sir.

Q. And either prior thereto or at any time immediately subsequent thereto were there any other vessels in the immediate locality?

A. There was several of them.

Q. What one or ones did you see?

A. I did not see any, it was that foggy; I could not see any.

Q. Didn't any come in sight at all?

A. One steam schooner.

Q. What steam schooner was that?

A. I do not remember that either; I did not see his name, he went right by us.

Q. Did you send or instruct any of your wireless operators to send out any wireless messages to any vessel or vessels except the "Santa Clara"?

A. I had the operator find out what ships were around in case we should need them?

Q. Just what did you tell him to do?

A. To send and find out just what ships were around.

Q. Did he make any report to you in regard to that message? A. He did.

Q. What did he say to you?

A. He said that he had picked up the "Santa Clara" first.

Q. Did he tell you at any time that he had picked up the "Willamette"? A. He did.

(Testimony of Richard Dickson.)

Q. Did you tell him to send any message to the "Willamette"?

A. He came to me and said that the "Willamette" was around; [211—12] I did not ask him whereabouts, thinking that she must be close up. I asked him to have her come around by us and if he would stay by us, thinking that if the passengers should be of the opinion that they wanted to move away from the "Roanoke" I would put them on her, but I never for a moment thought that I would take any assistance from any of them after I found that the "Santa Clara" was coming down south.

Q. What time did you arrive off Port San Luis?

A. That was in the morning.

Q. Of the 11th?

A. To the best of my recollection somewhere around three or four o'clock in the morning; I am not positive of that.

Q. To the best of your recollection it was somewhere around three or four o'clock in the morning of the 11th? A. Yes, sir.

Q. It took you from 4:45 on the 10th to somewhere around three or four on the 11th to arrive off Port San Luis? A. Yes, sir.

Q. What, when you arrived, did you do until daylight?

A. We lay off there for two or three hours until we went in.

Q. Did you remain stationary or were you cruising back and forth?

A. He was cruising back and forth with us.

(Testimony of Richard Dickson.)

Q. You did not anchor? A. No, sir.

Q. Why not? A. That I do not know.

Q. Have you been in Port San Luis often?

A. Nine years running in there from two to three times a month.

Q. And what is the character of the port and the approaches from the seaside?

A. It is a breakwater there which [212—13] forms the port and the harbor inside.

Q. I mean as to the character of the approaches in the vicinity of the breakwater?

A. It is a good opening; plenty of water.

Q. In the entrance itself?

A. Yes, sir, there is a bell buoy pretty well south, about—well, about two or three miles south.

Q. I mean on each side of the entrance, say a distance of two or three miles?

A. It is an open roadstead.

Q. I mean as to the character, whether there are any islands there?

A. One only; there is an island where the breakwater is built out of.

Q. Captain, how long have you been master of vessels? A. Since 1898.

Q. And hold a license for any character of steam and sail?

A. In the ocean, unlimited steam and sail.

Q. And before you were master how long were you first officer?

A. I was second officer and first officer since 1889.

Q. And during that time you have navigated many

(Testimony of Richard Dickson.)

vessels, have you not?

A. In the neighborhood of 11 or 12; about 11 I think it is.

Q. I will ask you to plot the position of the "Roanoke" on Libelants' Exhibit Palmer No. 1, Coast and Geodetic Survey Chart 5300, $11\frac{1}{2}$ miles south southwest magnetic of Point Arguello. There was a quarter of a point of westerly deviation?

A. Yes, sir.

Q. You have plotted the position of the "Roanoke" $11\frac{1}{2}$ miles south southwest of Point Arguello magnetic with a deviation of the ship's compass of two degrees westerly deviation, and I will ask you to put a large Capital A on [213—14] the position you have plotted on the chart?

A. Before I will say, that is according to the second officer's statement when he said he thought he saw Point Arguello Light-house, but it might not have been so; the sound of the whistle sounded more like south to me than south southwest.

Mr. LEVY.—Q. And you are just figuring here according to somebody else's statement?

A. Yes, sir, and from the log-book according to the second officer's statement when he thought he saw the light-house.

Mr. WALL.—Q. You were asked to plot the position on the chart from that particular data?

A. Yes, sir.

Q. I will ask you to mark the position that you have plotted with a large capital A so as to show that it is the little period inside the circle just to the left

(Testimony of Richard Dickson.)

of the letter R in Rocky Point? A. Yes, sir.

Q. The point or period surrounded by a circle just above 22, the figure 22 and just to the left of the letter R in Rocky Point is the position you have plotted according to that data?

A. From the data I have got; but myself I claim we were south or probably east of south.

Q. You know, as a matter of fact, do you not, Captain, that actually you were in between 14 and 15 fathoms of water? A. Yes, sir.

Q. You know that yourself? A. Yes, sir.

Q. So that as a matter of fact in order to be in 14 or 15 fathoms of water—

A. (Intg.) We should be about here.

Q. Put a period where you said “we should be about here”?

A. Yes, sir; we should be somewheres in that neighborhood.

Q. I will ask you to draw a circle around that, Captain, [214—15] where you say we should be somewheres around that neighborhood and put a capital B there? A. Yes, sir.

Mr. LEVY.—I object to this testimony as being incompetent.

Cross-examination.

Mr. LEVY.—Q. Captain, in one of these messages you talk about having passengers on board, is that the reason why you wanted assistance at once?

A. Yes, sir.

Q. Was it the situation of the vessel that needed assistance? A. No, sir.

(Testimony of Richard Dickson.)

Q. Or just because you had passengers and thought they might want to get away from the "Roanoke," and thought they might not want to be delayed a long time? A. Yes, sir.

Q. In the message you sent in regard to need of assistance at once you had that in view, is that right?

Mr. WALL.—We object to that as not proper cross-examination and also further the witness is the master of the vessel belonging to the claimant in this case, and also the questions are leading.

A. Yes, sir.

Q. This book here that you have referred to as the official log; that is not written by the man who takes down the data, is it?

A. He is a bridge officer; there is three bridge officers, the first, second and third officers stand watch and watch on the bridge.

Q. The officer on the bridge writes in the smaller book, the first one that was considered this afternoon? A. Exactly.

Q. Then the first officer writes what he finds in this first book, the bridge-book and transcribes it into this second so-called [215—16] official log-book? A. Yes, sir.

Q. But the first officer did not write down all those items in the first book, did he? A. No, sir.

Q. The first officer was not present when all those items were written down in the first book, was he?

A. He was on duty around the decks getting the boats and lines ready.

Q. He was not there making these notes?

(Testimony of Richard Dickson.)

A. No, sir.

Q. Had nothing to do with making the notes?

A. No, sir.

Mr. LEVY.—That is all.

Redirect Examination.

Mr. WALL.—Q. The first officer was around the deck during all that time?

A. He was around the deck, but he was not on duty?

Q. Does he not stand on deck watch also?

A. Eight hours a day.

Q. Eight hours a day he stands a deck watch?

A. Yes, sir.

Q. And you have how many officers? A. Three.

Q. And they each take turns four hours on and eight hours off? A. Yes, sir.

Q. During the time from 10 o'clock in the morning—from 10 o'clock in the morning of the 10th until 1 o'clock in the morning of the 11th, the first officer would have a deck watch? A. From when?

Q. From one o'clock in the morning of the 10th until one o'clock in the morning of the 11th he would have one or more deck watches?

A. The first officer's watch is from 4 to 8 morning and afternoon.

Q. As a matter of fact the first officer was on deck at 10 o'clock during that time? A. No, sir. [216—17]

Q. The first officer is on what time?

A. 4 to 8 morning and afternoon.

Q. He was on watch from 4 to 8 of the 10th in the

(Testimony of Richard Dickson.)

afternoon, was he not? A. Yes, sir.

Q. So that he was on watch for four hours during that time? A. Yes, sir.

Q. And he was also about the deck during the day looking after his duties as first officer?

A. Between 5 and 6 he was putting the line on the "Santa Clara."

Q. So as a matter of fact the first officer was around on the decks during the whole of the time that the "Roanoke" was being picked up by the "Santa Clara," was he not?

A. He was not on duty all the time.

Q. He was around the deck? A. Yes, sir.

Mr. LEVY.—Q. He had nothing to do with writing these notes in the small book that was used first?

A. Not except when he was on watch. [217—18]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, Francis Krull, a United States Commissioner for the Northern District of California, do hereby certify that pursuant to the order of reference made to take and report the testimony herein that on Thursday, August 21st, 1913, I was attended by F. R. Wall, Esq., proctor for the libelant, and David Levy, Esq., proctor for claimant, and by the witness Richard Dickson, who was of sound mind and lawful age, and that the said witness was by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in said cause; that the foregoing testimony was taken in shorthand by

Herbert Bennett, a competent stenographer, and afterwards reduced to typewriting, pursuant to such order of reference.

In witness whereof, I have hereunto subscribed my hand at my office in the city and county of San Francisco, State of California, this *15th* day of September, 1913.

FRANCIS KRULL,
U. S. Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Sept. 15, 1913. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [218—
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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 7th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,401.

OSKAR JOHANSEN et al.,

vs.

Str. "ROANOKE," etc.

Order Filing Opinion, etc.

This cause having been heretofore submitted to the Court for decision, now after due consideration had the Court filed its written opinion and by the Court

ordered that a Decree be entered herein for the sum of \$887.50, being for one-half month's pay to be distributed to the persons named in the memorandum attached to the opinion filed. [219]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,401.

OSKAR JOHANSEN et al.,

Libelants,

vs.

The Steamer "ROANOKE" et al.,

Respondents.

Order that Decree be Entered.

On April 10th, 1913, the steamer "Roanoke," bound from San Pedro to San Francisco, with 93 passengers and a cargo of freight, lost her propeller when in the neighborhood of Point Arguello. She drifted inshore from 10:05 A. M. until 11:10 A. M., when the anchor was dropped in 14½ fathoms of water at a point in the neighborhood of 1½ miles south by east of Point Arguello. There was no wind and the sea was calm, with a light swell from the west. During the time that she remained so anchored, that is, until about 5:20 P. M., she was enveloped in a dense fog, and not more than a half mile to the eastward of the regular course of vessels plying along the coast. No rough weather was encountered during this period, the sea remaining calm

and there being no wind. The anchor held without any apparent strain. The coast in that neighborhood is rocky in some places and sandy in others. The steamer "Santa Clara" en route from San Francisco to Port Harford, about 10:45 A. M. received the following message from the "Roanoke":

"Capt. Jessen, S. S. 'Santa Clara,'

Come to our assistance, lost wheel two miles South Point Arguello.

DICKERSON." [220]

To which he replied about 10:55 A. M.:

"Capt. Dickerson, S. S. 'Roanoke,'

Your message received. Coming to your assistance.

JESSEN."

At 12:07 the master of the "Roanoke" sent to the "Santa Clara" the following message:

"Jessen, 'Santa Clara,'

We need your assistance at once.

DICKERSON."

Upon receipt of the first message the "Santa Clara" altered her course and steamed directly for the "Roanoke," arriving there about 4:45 P. M., and took her in tow for San Luis where they arrived about 4 A. M., and where the "Roanoke" anchored about 6:45 A. M. outside the breakwater. She remained there until 11 A. M. when the tug "Sea Rover," dispatched from San Francisco for that purpose, took her in tow and finally landed her at her dock at the latter place. The "Santa Clara" dropped her at San Luis in obedience to the orders of the President of claimant, the North Pacific

Steamship Company, the owner of both steamers, but was always near enough to assist until the tug arrived. The present libel is by the crew of the "Santa Clara" for salvage.

It is evident that while the sea remained calm and the anchor held, the "Roanoke" would not be in any immediate danger. But on this coast in the month of April it is impossible to say how long such conditions would continue. A vessel so disabled as to be without motive power, within $1\frac{1}{2}$ miles of a rocky coast, may, if not relieved, reasonably apprehend danger. The telegrams of the master of the "Roanoke" would indicate that he believed that [221] he was in need of assistance, and the circumstances were such as to render that belief very reasonable. The fact that the danger was not immediately imminent is not at all controlling. It is contended that this was a towage instead of a salvage service; but to this contention I am unable to agree, "A salvage service is a service voluntarily rendered to a vessel needing assistance, and is designed to relieve her from some distress or danger either present or to be reasonably apprehended. A towage service is one which is rendered for the mere purpose of expediting her voyage, without reference to any circumstances of danger." *McConnochie vs. Kerr*, 9 Fed. 50. The services here rendered were salvage services. Both steamers belonging to the same owners, there is no claim made on behalf of the steamer "Santa Clara," the action being solely in behalf of the crew—with the exception of the master and the engineer who make no claim. The value of the "Roanoke" was

stipulated to be \$150,000.00, she was relieved without any difficulty by the "Santa Clara" with her own lines brought aboard the "Santa Clara" by her own crew. No hardships or special dangers were undergone by the "Santa Clara's" crew, and under all the circumstances I think one-half a month's pay to each of the crew will be ample compensation. This award is made for the reason that all salvage awards should be fairly substantial so that vessels and crews may be rather encouraged to render such services than discouraged from so doing.

A decree will be entered for \$887.50, being for one-half month's pay, which will be distributed to the persons named in the annexed memorandum.

October 7th, 1913.

M. T. DOOLING,

Judge. [222]

Office.	Name.	Salary.
Second Officer	Sjogren	85.00
Third "	J. E. Johnson	70.00
1st Asst. Engineer	Disher	100.00
2d " "	Reed	90.00
3d " "	Jacobs	80.00
Seaman	Becker	50.00
"	Meislahn	50.00
"	Cain	50.00
"	Palmer	50.00
"	Christenson	50.00
"	A. Johnson	50.00
"	Johansen	50.00
"	A. Anderson	50.00
"	E. Anderson	50.00

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“ Andreasson	50.00
1st Cook J. Pitts	75.00
2d “ Martin	60.00
3d “ W. E. Pitts	45.00
Pantryman Andrews	50.00
Mess Boy	..... Tennant	35.00
Purser	..... Frankel	90.00
Wireless Operator..	K. G. Clark.....	40.00
Fireman	..... Matson	55.00
“	..... Fraser	55.00
Wiper Staley (Fahey)	45.00
Oiler Kremer	45.00
“ Caskey	45.00
“ Nelson	45.00
Waiters A. G. Clarke.....	30.00

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“ Kotcharin	50.00
“ Gibson	35.00
“ Hansen	50.00

[Endorsed]: Filed Oct. 7, 1913. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [224]

At a stated term of the District Court of the United States of America in and for the Northern District of California, First Division, held at the United States Postoffice and Court Building, in the city of San Francisco, State of California, on Thursday, the 9th day of October, 1913. Present: The Hon. M. T. DOOLING, District Judge.

No. 15,401.

OSKAR JOHANSEN et als.,

Libelants,

vs.

The Steamer "ROANOKE," etc.

Final Decree, etc.

**FINAL DECREE IN BEHALF OF CERTAIN
LIBELANTS.**

This cause having been brought on regularly for hearing upon the pleadings and proof, and the advocates of the respective parties having been heard, and the Court having deliberated upon and considered all and singular the premises herein, the Court now finds that services rendered by the crew of the "Santa Clara" were salvage services; that there is due to each of the libelants herein mentioned, as members of the crew of the "Santa Clara," for salvage services, the sum set opposite to the name of each libelant, to wit:

Second Officer	..... A. Sjorgren	..... \$42.50
Third Officer	..... J. E. Johnson	..... 35.00
First Asst. Engr.	.. A. Disher	..... 50.00
Second " "	.. Geo. M. Reed 45.00
Third " "	.. G. W. Jacobs 40.00
Seaman Geo. K. Bekker 25.00
Seaman M. Meislahn 25.00

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Seaman P. Cain 25.00
Seaman F. G. Palmer 25.00
Seaman Christen Christensen	.. 25.00

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Seaman A. Johnsen	25.00
Seaman Oskar Johansen	25.00
Seaman A. C. Andersen	25.00
Seaman	..... E. Andersson	25.00
Seaman	..... H. Andreassen	25.00
First Cook	..... J. Pitts	37.50
Second Cook	..... J. Martin	30.00
Third Cook	..... W. E. Pitts	22.50
Pantryman	..... E. Andrews	25.00
Messboy	..... R. Tennant	17.50
Purser	..... B. Frankel	45.00
Wireless Operator	.. K. G. Clark	20.00
Fireman	..... V. Matson	27.50
Fireman	..... A. Fraser	27.50
Wiper	..... M. Staley (Fahey)	22.50
Oiler	..... W. Kremer	22.50
Oiler	..... A. S. Caskey	22.50
Oiler	..... S. B. Nilsen	22.50
Waiter	..... A. G. Clarke	15.00
Waiter	..... J. Kotcharin	25.00
Waiter	..... C. Gibson	17.00
Waiter	..... Hansen	25.00

And the Court further finds that each of said sums of money due to each of said libelants as afore-said is a lien on the said steamer "Roanoke." Now, therefore,—

It is Ordered, Adjudged and Decreed that each of said libelants recover for said salvage services the sum set opposite to the name [226] of each of said libelants as follows, to wit:

A. Sjogren.....	\$42.50
J. E. Johnson.....	35.00
A. Disher.....	50.00
Geo. M. Reed.....	45.00
G. W. Jacobs.....	40.00
Geo. K. Bekker.....	25.00
M. Meislahn.....	25.00
P. Cain.....	25.00
F. G. Palmer.....	25.00
Christen Christensen.....	25.00
A. Johnsen.....	25.00
Oskar Johansen.....	25.00
A. C. Andersen.....	25.00
E. Andersson.....	25.00
H. Andreassen.....	25.00
J. Pitts.....	37.50
J. Martin.....	30.00
W. E. Pitts.....	22.50
E. Andrews.....	25.00
R. Tennant.....	17.50
B. Frankel.....	45.00
K. G. Clark.....	20.00
V. Matson.....	27.50
A. Fraser.....	27.50
M. Staley (Fahey).....	22.50
W. Kremer.....	22.50
A. S. Caskey.....	22.50

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S. B. Nilsen.....	22.50
A. G. Clarke.....	15.00
J. Kotcharin.....	25.00
C. Gibson.....	17.50
Hansen.....	25.00

Together with interest at six per cent per annum on each of said sums from the date of the filing of the libel herein.

It is further ordered, adjudged and decreed that said libelants recover herein their costs, to be taxed.

And it is further ordered, adjudged and decreed that, unless this decree be satisfied or an appeal be taken therefrom within the time limited by law and the rules of this court, the claimant and the stipulators for value and for costs on behalf of said steamer "Roanoke," or either thereof, do cause the engagements in said stipulations, and in each thereof, to be performed or show cause within four (4) days after the expiration of the time to appeal, or if that be not a day of jurisdiction then on the first succeeding day of jurisdiction, why execution should not issue against them, and against each thereof, their goods, chattels, land and tenements or other real estate.

Dated: October 9, 1913.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Oct. 9, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [228]

*In the District Court of the United States, Northern
District of California, First Division.*

IN ADMIRALTY.

OSKAR JOHANSEN et al.,

Libelants and Appellees,

vs.

The Steamer "ROANOKE," etc., NORTH PA-
CIFIC STEAMSHIP COMPANY, a Corpora-
tion,

Claimant and Appellant.

Notice of Appeal.

To the Clerk of the Above-entitled Court and to F.
R. Wall, Esq., Proctor for Libelants:

You and each of you are hereby notified that
claimant, North Pacific Steamship Company, a cor-
poration, hereby appeals to the United States Circuit
Court of Appeals for the 9th Circuit, from the final
decree in behalf of certain libelants herein, dated
October 9th, 1913, wherein it was ordered, adjudged
and decreed that such libelants recover certain sums
of money as and for salvage services, together with
interest thereon and costs of suit.

Dated: October 16, 1913.

CHARLES H. SOOY and

DAVID L. LEVY,

Proctors for Claimant and Appellant.

Due service and receipt of a copy of the above is
hereby admitted this — day of October, 1913.

Proctor for Libelants.

Served Oct. 16, 1913. R. W. K.

[Endorsed]: Filed Oct. 17, 1913. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [229]

*In the District Court of the United States, Northern
District of California, First Division.*

IN ADMIRALTY.

OSKAR JOHANSEN et al.,
Libelants and Appellees,
vs.

The Steamer "ROANOKE," etc., NORTH PA-
CIFIC STEAMSHIP COMPANY, a Corpora-
tion,

Claimant and Appellant.

Assignment of Errors.

NOW COMES North Pacific Steamship Company,
a corporation, claimant and appellant herein, and
assigns errors in the rulings, proceedings, orders, de-
cisions and decrees of said District Court herein as
follows, to wit:

1. That the Court erred in finding that the ser-
vices rendered by the crew of the "Santa Clara" to
the steamer "Roanoke" were salvage services.

2. That the Court erred in finding that the crew
of the "Santa Clara" rendered any services what-
ever to the steamer "Roanoke."

3. That the Court erred in finding that libelants
herein rendered salvage or any services whatever
to the steamer "Roanoke."

4. The Court erred in finding that there is due
each of the libelants herein as members of the crew

of the "Santa Clara" or any other capacity, for salvage services, or for any services, or otherwise, or at all, the sum set opposite the name of each libelant in the decree heretofore filed herein.

5. That the Court erred in finding that each of said sums of money, or any thereof, is a lien on the said steamer "Roanoke." [230]

6. The Court erred in decreeing that each of said libelants recover for salvage services said sum, or that salvage or any services whatever were performed, or that any recovery whatever should be had by any of said libelants for alleged salvage or any other service.

7. The Court erred in decreeing interest at 6% per annum, or any other interest on each of said sums from the date of the filing of the libel herein, or for any time, or at all.

8. The Court erred in decreeing that said libelants or any of them, should recover their costs.

9. That the Court erred in not making and entering a decree herein in favor of this claimant, dismissing the libel herein and releasing the steamer "Roanoke" from any liability whatever thereunder, or to libelants herein, or any of them.

Each and all of the above particulars were, are and are hereby assigned by claimant and appellant as errors.

WHEREFORE claimant and appellant prays the judgment of the United States Circuit Court of Appeals, 9th Circuit, in the premises, that the decree appealed from be reversed and that it recover its

costs herein incurred.

Dated: October 16, 1913.

CHARLES H. SOOY and
DAVID L. LEVY,

Proctors for Claimant and Appellant.

[Endorsed]: Filed Oct. 17, 1913. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [231]

*In the District Court of the United States, Northern
District of California, First Division.*

IN ADMIRALTY.

OSKAR JOHANSEN et al.,
Libelants and Appellees,
vs.

The Steamer "ROANOKE," etc., NORTH PA-
CIFIC STEAMSHIP COMPANY, a Corpora-
tion,

Claimant and Appellant.

Bond on Appeal for Costs and Staying Execution.

KNOW ALL MEN BY THESE PRESENTS:
That we, North Pacific Steamship Company, a cor-
poration organized and existing under and by virtue
of the laws of the State of California, as principal,
and Illinois Surety Company, a corporation organ-
ized and existing under and by virtue of the laws
of the State of Illinois, as surety, are held and firmly
bound unto A. Sjogren, J. E. Johnson, A. Disher,
Geo. M. Reed, G. W. Jacobs, Geo. K. Bekker, M.
Meislahn, P. Cain, F. G. Palmer, Christian Chris-
tensen, A. Johnsen, Oskar Johansen, A. C. Andersen,

E. Anderson, H. Andreason, J. Pitts, J. Martin, W. E. Pitts, E. Andrews, R. Tennant, B. Frankel, K. G. Clark, V. Matson, A. Fraser, M. Staley (Fahey), W. Kremer, A. S. Caskey, S. B. Nilsen, A. G. Clarke, J. Kotcharin, C. Gibson, Hansen, libelants in the above-entitled cause, in the sum of Two Hundred and Fifty Dollars (\$250.00), and in the further sum of Fifteen Hundred Dollars (\$1500.00), to be paid to the said libelants and their successors or assigns, for the payment of which sums, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, [232] successors, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 17th day of October, 1913.

WHEREAS, North Pacific Steamship Company, a corporation, as claimant of the steamer "Roanoke," has appealed to the United States Circuit Court of Appeals, for the 9th Circuit, from a decree of the District Court of the United States, for the Northern District of California, bearing date the 9th day of October, 1913, in a suit in which the parties above named as libelants were libelants against the steamer "Roanoke," her machinery, tackle, apparel, etc., and which decree orders that said Steamer "Roanoke," etc., and her stipulators, to pay said libelants the sum of \$887.50, with interest thereon at the rate of 6% per annum from the date of the filing of the libel, together with costs, and

WHEREAS said North Pacific Steamship Company, a corporation, desires during the progress of

said appeal to stay the execution of said decree of said District Court.

NOW, THEREFORE, the condition of this obligation is such that if the above-named appellant, North Pacific Steamship Company, a corporation, shall prosecute said appeal with effect and pay all costs which may be awarded against it as such appellant, if the appeal is not sustained and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals of the 9th Circuit, in said cause, or on the mandate of said United States Circuit Court of Appeals, by the Court below, then this application shall be void; otherwise the same shall be and remain in full force and effect. [233]

Executed in duplicate.

NORTH PACIFIC STEAMSHIP COMPANY,

By CHAS. P. DOE,

President.

By C. H. SOOY,

Asst. Secretary.

ILLINOIS SURETY COMPANY,

[Seal]

By HAROLD M. PARSONS,

Its Attorney in Fact.

The foregoing cost and supersedeas bond is hereby approved as to the form, amount and sufficiency of surety this 17th day of October, 1913.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Oct. 17, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [234]

**Certificate of Clerk [U. S. District Court] to
Transcript.**

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, hereby certify the foregoing and hereunto annexed 234 pages, numbered from 1 to 234, inclusive, contain a full, true and correct Transcript of the records, as the same now appear on file and of record in the Clerk's Office of said District Court, in the cause entitled Oskar Johansen et al. vs. The Steamer "Roanoke," etc., and numbered 15,401, and which said Transcript of Appeal is made up pursuant to and in accordance with "Praeceptum to Clerk" (copy of which is embodied in said transcript), and the instructions of Messrs. Charles H. Sooy and David L. Levy, Proctors for Appellants herein.

I further certify that the costs of preparing and certifying to the foregoing Transcript of Appeal is the sum of One Hundred Twenty-one Dollars and Seventy Cents (\$121.70), and that the said sum has been paid to me by proctors for appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said District Court, this 13th day of December, A. D. 1913.

[Seal]

W. B. MALING,
Clerk.

By Lyle S. Morris,
Deputy Clerk. [235]

[Endorsed]: No. 2348. United States Circuit Court of Appeals for the Ninth Circuit. North Pacific Steamship Company, a Corporation, Claimant of the Steamer "Roanoke," Her Boilers, etc., Appellant, vs. A. Sjogren, J. E. Johnson, A. Disher, Geo. M. Reed, G. W. Jacobs, Geo. K. Bekker, M. Meislahn, P. Cain, F. G. Palmer, Christian Christensen, A. Johnson, Oskar Johansen, A. C. Andersen, E. Anderson, H. Andreason, J. Pitts, J. Martin, W. E. Pitts, E. Andrews, R. Tennant, B. Frankel, K. G. Clark, V. Matson, A. Fraser, M. Staley (Fahey), W. Kremer, A. S. Caskey, S. B. Nilsen, A. G. Clarke, J. Kotcharin, C. Gibson, ——— Hansen, Appellees. Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Received and filed December 13, 1913.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 15,401.

OSKAR JOHANSEN et al.,

Libelants and Appellee,

vs.

The Steamer "ROANOKE," etc.,

Respondent and Appellant.

**Order Extending Time to Prepare and File
Transcript on Appeal.**

It appearing that the testimony taken in the above-entitled case has not been transcribed and filed in said case, and that said testimony is to be included in the Transcript of Appeal, herein: It is hereby ordered that the appellant herein have further time, to wit, thirty days from the date hereof, in which to file the said Transcript on Appeal, in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated November 17th, 1913.

M. T. DOOLING,

Judge.

[Endorsed]: No. 2348. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to December 18, 1913, to File Record Thereof and to Docket Case. Filed Nov. 16, 1913. F. D. Monckton, Clerk. Refiled Dec. 13, 1913. F. D. Monckton, Clerk.



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No. 2348

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

NORTH PACIFIC STEAMSHIP COM-
PANY (a corporation), Claimant of the
Steamer "Roanoke", her boilers, etc.,

Appellant,

vs.

A. SJOGREN et al.,

Appellees.

BRIEF FOR APPELLANT.

1. Statement of the Case and Specification of Errors.

This was a libel for salvage by the officers and crew of the Santa Clara, excepting the master and chief engineer, against the steamer Roanoke. An amplification of the statement contained in the opinion of the District Judge (Apostles pp. 244-7) will serve to set forth the facts in the case. The quotation marks will disclose the parts taken therefrom:

"On April 10th, 1913, the steamer Roanoke bound from San Pedro to San Francisco, with 93

passengers and a cargo of freight lost her propeller when in the neighborhood of Point Arguello." The water was too deep to afford a safe anchorage and therefore her captain permitted her to drift in shore (p. 62) "from 10:05 A. M. until 11:10 A. M. when the anchor was dropped in $14\frac{1}{2}$ fathoms of water at a point in the neighborhood of $11\frac{1}{2}$ miles South by East of Point Arguello. There was no wind and the sea was calm with a light swell from the west. During the time that she remained so anchored, that is, until about 5:20 P. M., she was enveloped in a dense fog, and not more than a half mile to the eastward of the regular course of vessels plying along the coast. No rough weather was encountered during this period the sea remaining calm and there being no wind". The barometer was constant and the indications were of continued good weather (p. 60). Had any wind come up, its usual tendency at that period of the year, would have been to put the vessel further in shore (p. 59). "The anchor held without any apparent strain. The coast in that neighborhood is rocky in some places, and sandy in others. The steamer Santa Clara en route from San Francisco to Port Harford, about 10:45 A. M. received the following message from the Roanoke:

‘Capt. Jessen, S. S. Santa Clara,

Some to our assistance, lost wheel two miles South Point Arguello.

DICKERSON.’

to which he replied about 10:55 A. M.:

‘Capt. Dickerson, S. S. Roanoke,
Your message received. Coming to your assistance.

JESSEN.’

After another interchange of messages concerning the probable time of the Santa Clara’s arrival at Point Arguello, her master, Captain Jessen, telegraphed to Chas. P. Doe, President of the Company which owned both vessels as follows:

“San Luis Obispo, Calif., April 10th, 1913.
Doe, Pier 13, San Francisco, Cal.

Do you want us to go to the assistance of Roanoke takes five hours.

JESSEN.”

To this Doe replied:

“Jessen, Santa Clara.

Roanoke two miles south Arguello 10 A. M.
Broken shaft help him if necessary till tug arrives.

DOE.”

In pursuance thereof Jessen again telegraphed to Dickson to ascertain whether the necessity which Doe had prescribed as the condition of Jessen’s aid to the Roanoke existed:

“We are full of freight and passengers; is it absolutely necessary for us to go to your assistance.”

and in reply received:

“We need your assistance at once.

DICKSON.”

(Apostles, pp. 67-72.)

If Jessen had not been so directed by his employer, he would not have gone to the assistance of the Roanoke (pp. 71-73).

“Upon receipt of the first message the Santa Clara altered her course” going out a point and a half in attendance upon further orders (p. 73). Then in compliance with them she “steamed directly for the Roanoke arriving there about 4:45 P. M. and took her in tow for San Luis where they arrived about 4 A. M., and where the Roanoke anchored about 6:45 A. M. outside the breakwater”.

The distance over which the tow extended was approximately thirty-two miles (p. 55). At this time the Santa Clara left the Roanoke and pursued her way (pp. 49-50). The Roanoke remained at anchor unattended, “until 11 A. M. when the tug Sea Rover, dispatched from San Francisco for that purpose, took her in tow and finally landed her at her dock at the latter place”.

Insofar as danger or safety of the vessel was concerned her position at anchor near Point Arguello and that near Port Harford were practically the same (p. 50). Both places were open roadsteads (p. 58) and the ocean beds were similar in character and anchorage facilities (pp. 82-3).

At this point in the statement, the District Judge has said that the Santa Clara “was always near enough to assist until the tug arrived”. The record contains nothing from which this fact may be in-

ferred, unless it be the testimony of Dickson taken before the commissioner:

“Q. Did you remain stationary or were you cruising back and forth? A. He was cruising back and forth with us.” (p. 236.)

But this has obvious reference to the time when both vessels waited until daylight so that the Roanoke could drop her anchor.

The observation of the District Judge is at variance with Dickson’s testimony given at the trial:

“Q. What time did the Santa Clara leave you? A. Between 5 and 6 in the morning to the best of my recollection.” (pp. 49-50.)

and to the question:

“Q. Where did you leave the Roanoke in relation to Port San Luis?”

Captain Jessen replied:

“A. Off the breakwater. I guess about the southeast end of the breakwater; it was foggy; I do not know exactly where.” (p. 90.)

The parts above quoted constitute a reproduction of the District Judge’s statement of facts in its entirety. The features of the case which are added to make the narrative complete disclose that in reaching his conclusions the District Judge omitted from consideration factors of plain and unquestionable import, the effect of which will be emphasized in the course of the argument.

Upon consideration of this evidence in which there is no substantial conflict, the District Judge

decided that the services rendered the Roanoke by the crew of the Santa Clara constituted salvage and awarded them the sum of \$887.50, with costs amounting to \$146.60. It is submitted that serious error was committed in that the service was clearly towage on account of which no remuneration can be given here; and further, even conceding it to have been salvage, it was of such a low order that the award was entirely too large.

2. The Service Was Towage.

In reaching this decision, the District Judge observed in reference to the calm sea and weather that on the Pacific Coast "in the month of April it is impossible to say how long such conditions would continue. A vessel so disabled as to be without motive power, within one and one-half miles of a rocky coast, may, if not relieved, reasonably apprehend danger. The telegrams of the master of the Roanoke would indicate that he believed that he was in need of assistance, and the circumstances were such as to render that belief very reasonable." The statement concerning local climatic conditions is open to serious question. The unusually mild character of the winter season was in April a matter of common knowledge and a subject of general comment among all residents. The presence of a thick fog and a calm sea made continued good weather morally certain. Every indication, including a steady barometer, pointed to this. Even should there have come a breeze of such violence

that the vessel's two anchors would have been caused to drag—which was most unlikely—at that time of the year it would have blown in such direction as to put the vessel further off shore. But the course of coastwise steamers was only a half mile to the west and the Roanoke had already picked up the steamer Willamette whose tow had not been sought, merely to avoid an obligation to pay for the towage which another of the company's vessels was able to render (pp. 235-6).

The observation of the District Judge that Dickson's telegrams indicated his belief that he needed assistance can have no force. Regardless of the messages it was plain that without assistance, either by way of tow or a new propeller, the Roanoke's voyage would even this day be uncompleted. This begging of the question should be avoided. It is an assumption of the very point in issue—that the assistance which the Roanoke needed and received was a salvage service as distinguished from towage.

What is there then in these facts that will justify the conclusion that the assistance rendered was salvage? What danger would a reasonable person apprehend? Capt. Dickson testified that there was no excitement on board his vessel (p. 53). Much point was made by the libelants upon the message in which he mentions his passengers, but this had obvious reference, as explained by the captain, to the inconvenience caused by the delay in the journey (pp. 239-40). There was in fact no circum-

stance in the course of the Santa Clara to Point Arguello, her meeting with the Roanoke, taking her line aboard and towing her to Port Harford, to characterize the case otherwise than as one of towage. What then was the legal basis of the contrary decision of the District Judge? One case is cited.

McConnochie v. Kerr, 9 Fed. 50,

and the following excerpt quoted from it:

“A salvage service is a service voluntarily rendered to a vessel needing assistance, and is designed to relieve her from some distress or danger either present or to be reasonably apprehended. A towage service is one which is rendered for the mere purpose of expediting her voyage, without reference to any circumstances of danger.”

The applicability of this statement of law can best be tested by an inquiry into the salient facts there before the court.

The nearest safe anchorage of the Colon when injured was fifty-seven miles distant (p. 52); in the meantime, her captain testified, she was “at the mercy of the winds” (p. 52). The gales incident to that region were northers and hurricanes and a hurricane would have placed the ship in jeopardy (p. 53). That these facts make out a case far different from the one at bar is plain. Following the passage quoted by the District Judge is this statement:

“But if the evidence shows that the vessel was free from all circumstances of danger, present or apprehended; that ordinary towage

service, at ordinary rates could have been shortly obtained, so that salvage compensation could not be presumed to have been intended; and that the towage was rendered for no other purpose than to expedite the completion of the voyage—the service will be deemed to be a towage service only.”

Then is discussed a deciding factor of the case—the master of the assisting ship had gone back on his course and lost a day’s time, thus violating the vessel’s contract with all concerned. It was held:

“These were circumstances of danger, though not of immediate peril, which justified the Colon in asking help of the first vessel that appeared. They justified the captain of the Pomona, under his implied authority, to deviate for purposes of salvage, in departing from her own voyage to tow the Colon to a safe anchorage, and consequently entitled the Pomona and her crew to a moderate salvage compensation.” (p. 55.)

In the case at bar no such considerations moved the captain of the Santa Clara to go to the Roanoke’s assistance. His action was determined solely by the directions received from Mr. Doe.

The point under discussion has received careful consideration in two comparatively recent decisions in which the facts bear a striking resemblance to those before this Court. The conclusions reached are therefore of interest. They are

The J. C. Pfluger, 109 Fed. 93, and
The Robert S. Besnard, 144 Fed. 992.

In the latter, the *Besnard* while on a winter voyage from Montevideo to New York was struck by a water spout when 500 miles east of Charleston, losing part of her masts and retaining only six of her nineteen sails. She was able to make five or six knots an hour with favorable breezes but the wind becoming northerly she headed for the Port of Charleston. Her master made two or three unheeded requests for aid from passing vessels. He reached the vicinity of Charleston Light Ship that night and came to anchor four miles away. On the following morning libellant's tug went out and towed the vessel in. Pertinent excerpts from the case may here be quoted:

“While it is not claimed here that any bargain was actually made, that the service was to be considered a salvage service, and while the master denies that anything was said about his being in a position of danger, there is an implication from what took place that the master was put upon notice that something more than ordinary towage would be demanded, and the acceptance of the services of the tug in such conditions puts upon the vessel the burden of proving that nothing more than towage was required, and raises a presumption that it was in the nature of a salvage service, and the case has been considered by me in that aspect. * * * (p. 998.)

It seems that the circumstances of this case bring it within the qualification, and that the service rendered here was precisely the same and no other than that which would have been rendered if no damage or accident had happened to the bark.” (p. 999.)

After a full discussion of the case of *The Colon* (supra) it is held:

“If the vessel is in a position which requires towage service only, I do not apprehend that the mere fact that she had previously suffered injury changes the nature of the service, unless there are some circumstances of peril, immediate or reasonably to be apprehended, from which the vessel is relieved, or some hazard encountered, or unusual work done by the relieving vessel.” (p. 1002.)

The Pfluger left San Francisco, July 11th, 1900, bound for Queenstown. Next morning her main mast and mizzen top mast, fore-topsail and fore royal yard, were carried away by a whirlwind or squall of great violence. Her decks were injured to such extent that they leaked whenever a sea was shipped. The voyage was abandoned and with a few of her sails set the vessel made for Santa Barbara about two hundred miles distant. On the night of July 15th she reached a point in Santa Barbara Channel approximately twelve miles from port. Her signal lights, indicating that she was not under command, were seen by the Greenwood bound from Los Angeles to San Francisco. The latter made a slight deviation from her course for the purpose of meeting the Pfluger and rendering whatever assistance was necessary. The Pfluger's master requested a tow into port. The Greenwood passed a hawser to her and slowly towed her to an anchorage in the Port of Santa Barbara. This consumed about six hours' time and thereupon the

Greenwood resumed her voyage. It was held by Judge de Haven:

“Towing a vessel into a harbor may or may not be a salvage service. If the vessel towed was by this means aided in escaping from a present or prospective danger, the service will be regarded as one of salvage, and the towage as merely an incident. If, upon the other hand, the vessel thus assisted was not encompassed by any immediate or probable future peril, such service will be treated as one of towage merely and compensated as such.”
(p. 95.)

The case was held to be one of towage and the compensation awarded therefor was payable only to the owners of the Greenwood; further, that the master and crew performed only their ordinary duties for which they were employed on the vessel and were not entitled to share.

Such was the situation in the case at bar. To apply the term “salvage” to the service given by the Santa Clara is to travesty the meaning of the word.

3. Same. The Recent Act of Congress.

The act of Congress approved August 1, 1912, is, of course, controlling in this proceeding. Inasmuch as its meaning was drawn into question in the trial court and may here be a subject of contention on libelants' part, it is well to quote its pertinent sections:

“BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

That the right to remuneration for assistance or salvage services shall not be affected by common ownership of the vessels rendering and receiving such assistance or salvage services.

Sec. 2. That the master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew or passengers, render assistance to every person who is found at sea in danger of being lost; and if he fails to do so, he shall, upon conviction, be liable to a penalty of not exceeding one thousand dollars or imprisonment for not exceeding two years, or both.

Sec. 3. That salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories."

It has been urged by the libelants that the act has worked a change in the well settled principles of the law of salvage by the use of the term "assistance"; that special remuneration is merited by reason of assistance of any kind, although it does not measure up to the requirements of a true case of salvage. There is no suggestion of such intention in the law. No new rights in this respect are created. Qualifications of rights which had long been established are discarded. The title makes the purpose clear: "To harmonize the national law of salvage"—thus abrogating such statutes as Section 2079, Civil Code of California—"with the provisions of the international convention for the unification of certain rules with respect to assistance and salvage at sea". The term "assistance"

is used as a synonym. Section 1 destroys the materiality of common ownership in regard to "the right to remuneration for assistance or salvage services". The nature of that right and the incidents giving rise to it are not affected.

The only other section asserted to be applicable here is section 3. The libelants have argued that they saved the lives of those aboard the Roanoke. But since this goes to the quantum of the award rather than to the question of salvage *vel non*, it will be considered in the following subdivision of this brief.

4. The Service Was Not Voluntary.

The definition of salvage quoted by the District Judge is:

"A salvage service is a service *voluntarily* rendered to a vessel needing assistance, and is designed to relieve her from some distress or danger either present or to be reasonably apprehended."

It is noticeable that in all the cases where salvage has been claimed, whether the service was so held or not, there has been one feature in common—the vessel lending aid has acted solely upon the inclination of her commander and with the unquestioned purpose of relieving another in distress. The conduct of the Santa Clara's captain stands out in strong contrast. No criticism is intended; it was obvious to him that the predicament of the Roanoke was not at all serious. To be sure, he answered

Dickson's call, threw his wheel over a point and a half and thus prepared for orders which might direct him to proceed past Port Harford. Upon his inquiry of Doe he was instructed to help the Roanoke if necessary. This in itself would be sufficient to take from the service rendered by the Santa Clara the voluntary character which is the *sine qua non* of salvage. But in further recognition of the triviality of the incident and the relative importance of the commercial necessities of the situation Captain Jessen asked the Roanoke's master whether his assistance was indispensable, stating that he had a full cargo and capacity number of passengers. He had no intention of passing Port Harford unless so directed (Ap. pp. 71, 73). The Roanoke's affirmative reply—its owner's mouthpiece—determined Captain Jessen's action. The error of the District Judge in deciding in favor of the salvage claim may be explained on one of two theories: He either ignored or failed to appreciate the significance of these wireless messages; it is noteworthy that they are not even mentioned in the opinion while others are quoted in full.

Suppose, then, that Captain Jessen were here asking for salvage award, could he satisfy a discerning court that in his conduct there was the essential ingredient of voluntary service? Inasmuch as he represents the complement of seamen aboard, their claim must be gauged by the same standard. The Santa Clara proceeded to Point Arguello under the express orders of its owner.

There was not a member of her crew who performed one act outside of the scope of his usual employment. There was no hardship, no danger undergone. The opinion of the District Judge so states and the record so conclusively establishes. There is no feature to distinguish the assistance given by the Santa Clara from that of the tug Sea Rover which was dispatched from San Francisco to complete the tow of the Roanoke to that port and whose service, even libelants concede, was mere towage; none—except perhaps that she was especially designed for that purpose, while to the Santa Clara it was an incident in her maritime career. But this was a material consideration only to the owner. The crew are employed to man the vessel and have no cause to complain because upon an occasion she is used to tow another where no peril or hardship is involved. The record shows that the Santa Clara's crew performed no service whatever (pp. 80-81). That rendered by the vessel herself was not voluntary. Therefore, there was no salvage.

5. The Amount of the Award Is Too Large.

But conceding for the purpose of this branch of the argument that the services of the Santa Clara was in the nature of salvage, her crew who have performed none but their usual functions are surely not entitled by the mere incident of their passive presence on board the vessel to the award decreed them. The decision here does violence to all the precedents. If salvage at all, it was salvage

of the very lowest order. An examination of similar cases will serve to demonstrate this contention.

The Alice Blanchard, 106 Fed. 238.

The steamer *Alice Blanchard* was discovered by the *Farallone* lying broadside to the swell, apparently disabled. She was fourteen miles north of Point Orford, and four or five miles off shore. The *Farallone* changed her course and upon meeting with the *Blanchard* found that she had met with an accident whereby a hole six by twelve inches had been stoved through her bow about six inches above the water line, thus admitting the entrance of water into her hold when under headway, and also when not under headway, whenever her bow dipped into the sea. The water was three or four feet deep in her engine room, but her fires were still burning. The master deemed it prudent to accept the *Farallone's* hawser and she was towed into Port Orford. This service consumed three hours and a half.

Substantial repairs were made there and after five hours' delay the *Farallone* towed her to San Francisco, the voyage covering forty-five hours. The delay caused to the *Farallone* by the accident was fourteen hours. The decree was for \$1000, one-quarter of which was awarded to the master and crew.

The Devonian, 150 Fed. 830.

The *Devonian* while on a voyage from Liverpool to Boston was driven from her course by a north-

easterly snowstorm and stranded at Scituate fifteen hundred feet from shore, receiving considerable injury from the buckling of her plates and floors. At low tide she rested on her bottom for full length and at high tide half length. She was valued, with her cargo, at \$800,000. On the following afternoon the tug *Patience*, valued at \$55,000, left Boston for the purpose of offering, and did offer, her services which were accepted. She pulled the *Devonian* off. The tug was absent from Boston in all five hours. An award of \$500 was made to the master and \$700 to the crew.

In both of these cases it is to be noted that the situation of the vessel assisted was much more serious than that of the *Roanoke*. Moreover, the service was purely voluntary. The value of the *Devonian* was over five times that of the *Roanoke*, yet the salving crew received less than in the case at bar.

The New Camelia, 105 Fed. 637.

Like the *Roanoke*, the *New Camelia* broke her shaft when about the middle of Lake Pontchartrain and was wholly disabled for further navigation. She was anchored and a boat sent to a port twelve miles distant for assistance. Shortly afterwards, a tug was sighted and the vessel was towed into port.

The District Judge had decreed \$1750, but on appeal it was held that \$60 would have been a proper award for both the salving vessel and her

crew, and a decree for the latter, in the sum of \$20 was directed.

The New Camelia was valued at \$35,000. The Roanoke is worth somewhat a little more than four times that amount. Upon the basis of this authority, the figure here should be \$80.

The Catalina, 105 Fed. 633.

The Catalina while in the Gulf of Mexico on her way to New Orleans, broke here propeller shaft beyond temporary repair. During the night, when about sixty miles from the mouth of the Mississippi River, she signaled the steamship Olympia for assistance. The latter towed the Catalina to a position of safety at South Pass, and thence resumed her voyage, having been delayed in all about twenty-four hours. The Catalina was valued at \$200,000. The District Judge had awarded \$6,000 salvage, one-third of which was to be distributed among the officers and crew of the Olympia. The Circuit Court of Appeals held that the Olympia was entitled to compensation of \$100.00 per hour, or \$24,000.00, of which \$800.00 was decreed in favor of the officers and crew.

Except for the fact that there was some room for the conclusion that the Catalina was in a perilous position, by reason of the great distance from port and her inability to find a safe anchorage, the case presents a striking analogy here. It is therefore interesting to calculate the matter of

compensation upon the basis of that awarded by the Court of Appeals in the Fifth Circuit.

The Santa Clara would have made Port Harford at about noon. Instead, she arrived there, with the Roanoke in tow the following morning at approximately 4 A. M. She was thus delayed eighteen hours. At \$100 an hour this would be \$1800 for the vessel and her crew. The value of the Roanoke is three-fourths that of the Catalina; three-fourths of \$1800 is \$1350, one-third of this—the proportion payable to the master and crew—is \$450. The salaries of the master and chief engineer of the Santa Clara total \$325 (p. 122). This is a little less than 15% of the sum of the wages of libelants added to that of these officers. The remaining 85% of \$450 is \$382.50. Such would be the award here when figured upon the basis of that in the Catalina.

The Monticello, 81 Fed. 211.

The Monticello's boiler broke down and she was disabled when from eight to fifteen miles from the coast. The wind was strong and a rough sea was running. After several unsuccessful attempts, a boat was lowered from the San Benito which had been attracted by the Monticello's signals of distress. A tow line was sent aboard the Monticello and she was then taken in tow and successfully brought to the Port of San Francisco. It was ebbtide and the San Benito lost in all twenty hours' time. Judge Morrow decreed her \$350 as

compensation which was to include damage done to a hawser and loss of a rope.

Another feature of plain import in this consideration is that in towing the Roanoke from Pt. Arguello to Port Harford, the Santa Clara did not take her to a place of safety. It was testified by Captain Dickson as libelants' witness (pp. 50, 58) that the situation at Port Harford was identical with that at Pt. Arguello. If there was any danger it was the same at both places. If it was salvage at all, it did not meet with success until the tow was completed at San Francisco where the Roanoke was docked. The alleged salvage did not end until then. Just as had the Santa Clara, the tug Sea Rover assisted the Roanoke upon the order of her owner, and towed her a distance of over two hundred miles. If it was salvage by one, it was salvage by both. And any award to the vessel or crew giving first aid must take into consideration the service of the second without which the essential element of salvage—success—would never have been present. The distance of the tow by the Santa Clara—thirty-five miles—suffers by comparison. That covered by the Sea Rover was six times as great. Because the Santa Clara was not regularly engaged in the towing business her remuneration should—all other things being equal—be twice that awarded a tug (see *The Catalina*, 105 Fed. 633, 6), thus reducing the comparative value of the service of the Sea Rover to three times that of the Santa Clara. The total

salvage award to the Santa Clara, computed on the basis of that decreed to the crew—at least one-third—would be \$2662.50. The tug should be entitled to three times that amount: \$7987.50, thus making the total salvage award for the assistance given the Roanoke the sum of \$10,650. It is sufficient to refer to the amount of the decrees in the cases above cited for comparison to demonstrate how completely the District Judge has misconceived the theory and mathematical basis of a salvage award.

6. Same. The Effect of the Recent Statute.

It has been contended that the clause in the recent Act of Congress:

“Sec. 3. That salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo and accessories.”

should effect an increase of the award. It is difficult to conceive upon what ground the contention that life was saved can be based. Even if there had been “a danger reasonably to be apprehended” it would not follow that the lives of those on board the Roanoke were saved. On the contrary, it is plain that their lives were not in the slightest peril. But conceding everything in favor of the libelants’ argument, the statute creates no right to remuneration for life salvage as such. No new claim against the ship or her owner is given. The law provides

that in a case of salvage, if others taking part save human life render no assistance to the vessel or cargo, and therefore under settled principles would receive no compensation, they are nevertheless entitled to a share in the award which the salvors of the vessel are given. A right to participate with the latter is created. Part of their remuneration is taken from them and given to the salvors of life. But taking part from the whole does not result in making the whole any greater. Therefore, the statute contains no warrant for a general increase in salvage awards even though lives as well as property have been saved.

7. Conclusion.

In conclusion, it is submitted that the decree of the District Court is erroneous and that the libel should be dismissed. The unhealthy effect of the decree if permitted to stand cannot be overestimated. It sets a dangerous precedent in shipping affairs on this coast. Vessels laboring under disability will refuse assistance of any kind for fear that the service may be held a salvage and their owners mulcted with large compensation. This question is now in this Court for the first time. The decision here will be the gauge by which all cases of similar character will be measured. The principles of maritime law as expounded by the authorities when applied to the facts at hand compel, it is submitted, a reversal of the decree.

CHARLES H. SOOY,

DAVID L. LEVY,

Proctors for Appellant.

No. 2348.

UNITED STATES

Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

NORTH PACIFIC STEAMSHIP
COMPANY, a Corporation, Claimant
of the Steamer "ROANOKE," Her
Boilers, etc.,

Appellant,

vs.

A. SJOGREN, et als.,

Appellees.

APPELLEES' BRIEF.

STATEMENT OF THE CASE.

The statement of the case, as presented by the appellant, is insufficient. The Apostles show that the facts are as follows:

On April 9, 1913, the S. S. "Santa Clara" left San Francisco, loaded with cargo and passengers, bound on a voyage thence to Port Harford, the port of San

Luis Obispo, California. In the forenoon of the next day, a little after ten o'clock, and while that vessel was within about an hour and a half's steaming of her port of destination, a wireless message was received by her from the S. S. "Roanoke," stating that the "Roanoke" was near Pt. Arguello with her propeller broken and that she was in need of assistance. The messages that were exchanged by wireless between the different persons connected with the services rendered and which show the nature of the services are set out in "libelant's exhibits" one (1) to eighteen (18) inclusive (in this court in the original), and in claimant's exhibits. The substance of the most material of these messages is as follows:

First. The master of the "Roanoke" (Dickson) informed the master of the "Santa Clara" (Jessen) that the "Roanoke" had lost her wheel two miles south of Point Arguello, and said, "Come to our assistance." To this Jessen answered: "Coming to your assistance." Thereafter Dickson asked Jessen, "When do you expect to arrive here?" And the answer was, "Expect to arrive in five hours. Off (i. e., I am now) Point Buchon." Then Jessen sent this very pertinent inquiry, "We are full of freight and passengers. Is it *absolutely necessary* for us to go to your assistance?" (Ap. 67). And Dickson's answer was, "*We need your assistance at once.*" And this entry was made in the "Roanoke's" logbook, "4:45 S. S. 'Santa Clara' arrived in response to wireless call" (Ap. 230).

Captain Jessen said, in answer to one of claimant's questions, that he had decided to go to the assistance of the "Roanoke" before he had any permission from the owners so to do; that when he got such permission he "was going there" (Ap. 70).

Upon receiving the first message, the "Santa Clara," instead of proceeding to her port of destination, changed her course and steamed directly for the "Roanoke," arriving off Point Arguello about 4:45 p. m. (Ap. 73-79). The "Santa Clara" on the way down met with fog, the first part was in patches, first thick and then clearing. During the latter half of the trip it shut down foggy, thick fog (Ap. 79).

After the "Santa Clara" reached the "Roanoke," she took the latter in tow for Port San Luis, where they both arrived about 4 a. m. the next day. The "Roanoke" anchored about 6:45 a. m. outside the San Luis breakwater, and remained there until taken in tow about 11 a. m. by the tug "Sea Rover," dispatched from San Francisco by the owner of the "Roanoke" for that purpose, and was by the tug towed to San Francisco and placed alongside the wharf there. The "Santa Clara" dropped the "Roanoke" at San Luis in obedience to the orders of the president of the claimant, but she was always near enough (at her destination, Port San Luis, a mile or a mile and a half from the "Roanoke") to assist the latter if needed (Ap. 57).

The "Roanoke," a steamer of 1654 net and 2354

gross tons, worth not less than \$150,000, loaded with cargo and passengers, bound from San Pedro to San Francisco, on the morning of April 10, 1914, about 10:05 a. m., while in from 17 to 20 fathoms of water and about three miles south by east of Point Arguello, in a thick fog, with a moderate swell setting from the westward to the eastward, with little or no wind, was disabled (Ap. 46-47). The extent of her injuries were as follows:

Her tail shaft was broken and two blades were knocked off of her propeller; the propeller "was pulled right up against the rudder-post, tight" (Ap. 225).

This large steamer had two sails, a jib and a main sail; but these were insufficient to give her steerage way. She was, therefore, entirely without motive power of any description, and either had to drift or anchor (Ap. 48). It was while she was without power of any kind and while drifting that she was sending out the appeals for help already set forth. In addition to sending out these appeals, one of the first things the master of the "Roanoke" did after the accident was to tell his wireless operator to find out what ships were around "in case we should need them." His operator thereafter reported to him that the "Santa Clara" had been picked up first and that the "Willamette" had also been picked up. Dickson then had the operator ask the "Willamette" to come around by him and to stay by him (Ap. 235-236).

From 10:05 a. m., when the tail shaft broke, until 11:10 a. m. the "Roanoke" drifted to a position about $1\frac{1}{2}$ miles S. by E. from Point Arguello and about one-half or three-quarters of a mile from the shore at the nearest point, and anchored in $14\frac{1}{2}$ fathoms of water, about half a mile inshore of the course of traffic (Ap. 239). The coast in the vicinity of Point Arguello, near where the "Roanoke" met with her accident and where she anchored is thus described by Palmer, his point of view being from about $1\frac{1}{2}$ miles out at sea (Ap. 173-175):

The mainland on which Point Arguello lighthouse stands sticks out from the rest of the coast about $\frac{1}{2}$ a mile; just outside of the lighthouse, on the seaside, there are four or five rocks that look (from $1\frac{1}{2}$ miles away) to be about six or eight feet square. Right south of the lighthouse are more rocks that seem to be a little bigger. Then from the lighthouse and in a southeasterly direction across the Bay to the coast there is a bit of rocky beach, about half a mile; then there is a rocky point, about 40 or 50 feet high, with rocks at the foot, just where the period is put after the word "Pt." on the words "Rocky Point" on the chart; from the figure "5" above the letters "Pt." in the words "Rocky Pt." on the chart to the north eastward the condition of the beach is the same as that between Pt. Arguello and the coast to the north-east of the figure "5"; below Rocky Pt. the beach is stony, stones as big as your hand, and on the beach are

little rocks right along, most of them not visible except at low water.

Captain Gunderson, who was not connected in any way with the litigation, and who as a master of vessels has passed up and down that part of the coast 400 or 500 times, says that the vicinity in which the "Roanoke" was anchored is considered by him to be "one of the most dangerous parts of the Pacific Coast" (Ap. 36). He also says that he considers that a vessel anchored where the "Roanoke" was anchored at the time she was there anchored, and in circumstances similar to those in which she was anchored, "is in a dangerous position." Also, his experience is that swells in that locality sometimes spring up "pretty rapidly" (Ap. 37). This experienced witness also stated, "It is dangerous anywhere (along the coast) if you lose your propeller or shaft. You are in a bad fix as well as any other place" (Ap. 43).

And on cross-examination, claimant brought this out of witness Palmer: "Sometimes those ground swells are very heavy, are they not? A. They are very heavy" (Ap. 186).

The fog, as the "Santa Clara" neared the "Roanoke," was so thick that the "Roanoke" could not be seen until the "Santa Clara" was within 100 or 150 feet of her. In approaching the "Roanoke," the "Santa Clara" was misled by the "Roanoke's" whistle into believing the vessel whistling to be a tug ahead, and but for the promptness of the man at the helm of the

“Santa Clara” in shifting the wheel, the “Santa Clara” would have collided with the “Roanoke” because of the fog (Ap. 176, 177, 183, 184).

There was no difficulty encountered in taking the “Roanoke” in tow, nor was the operation attended with any other danger than the one just mentioned, and we so stated time and again in the trial court. The “Santa Clara” had no apparatus whatsoever on board for towing, nor was she in any wise fitted for towing. She had to take the hawser of the “Roanoke” (Ap. 80).

Both vessels belonged to the claimant.

ARGUMENT.

The Services Rendered Were so Clearly Salvage Services That Damages Should Be Assessed to Appellant, Under Subdivision 4 of General Rule 30.

Appellees were compelled to make their case almost entirely from the testimony of the claimant's own witnesses. Every witness called by the claimant was also called by appellees. All of claimant's witnesses were examined and cross-examined in open court. The trial court had the fullest opportunity to ascertain from the testimony and from the bearing of the master of the “Roanoke” whether the latter believed he was in need of assistance. The Court determined that he did so believe, and, of course, even ordinarily, this Court would not disturb that finding, unless it was clearly

contrary to the evidence. But here is a case where the law is well established and where there is no possibility of throwing the slightest shadow of a doubt upon the findings of fact. These facts, summed up, are:

A steam vessel of more than 2000 gross tons, with 90 odd passengers on board, was adrift in a thick fog in the month of April, without motive power, within three miles of a rocky coast near one of the most dangerous points on the Pacific Coast, where heavy swells or winds may spring up at any time. Her captain implored aid of the "Santa Clara," for there is no other construction to be put upon his answering Captain Jessen's message, "We are full of freight and passengers. Is it absolutely necessary for us to go to your assistance," with the prompt response, "We need your assistance at once."

Also, the course of the "Santa Clara" was changed to head for the "Roanoke" as soon as the first call for assistance was received, and was not thereafter changed. And that was as it should have been, and the way it should always be in like cases. And owners on shore have no business to try to substitute their judgment for the master's. When the wireless operator at sea catches a cry for assistance the officers and crew of his vessel should go at once; not stand upon the order of their going, debating whether or not the owner of the vessel in distress, when the benefits are forgot, will try to prove to an admiralty court that there was no need for the assistance. The an-

swer of this Court must, it seems to us, always be in the shape of a liberal reward to those who give their aid at once, without a moment's hesitation, and also commendation for having acted promptly and in having construed the messages as meaning what they said.

THE LAW.

That the law is well-settled appears from what this Court said in the case of the "*Flottbek*," 118 Fed., 960:

"There is a marked and clear distinction between a towage and a salvage service. When a tug is called or taken by a sound vessel as a mere means of saving time, or from considerations of convenience, the service is classed as towage; but if the vessel is disabled, and in need of assistance, it is a salvage service. In cases of simple towage, only a reasonable compensation is allowed, as upon a *quantum meruit*. In case of salvage, the award is upon a broader and more liberal scale, as we have before stated. In *McConnochie vs. Kerr* (D. C.), 9 Fed., 50, 53, Judge Brown said:

"'A salvage service is a service which is voluntarily rendered to a vessel needing assistance, and is designed to relieve her from some distress or danger either present or to be reasonably apprehended. A towage service is one which is rendered for the mere purpose of expediting her voyage, without reference to any circumstances of danger.'"

Of course no other authority is necessary; but we give a few other cases similar to the one at bar. They are:

"Any service or assistance applied for or received by a vessel in peril or distress which in any measure conduces to its safety is in the nature of salvage service, and is to be compensated upon principles more liberal than ordinary work. . . . It is none the less a salvage service that the peril apprehended did not befall, or that the labor expended was insignificant, and performed without actual risk. These considerations affect the *quantum* of compensation, but not the nature of the service, or the principles by which the compensation is to be measured." "*The Apache*," 124 Fed., pp. 907-908.

"Towing a disabled vessel on the high seas is always a salvage service. . . . In the act of making preparations for towing and being towed, ships out at sea are very liable to collisions, to the fouling of hawsers, to the smashing of small boats, to losing anchors, and to other serious accidents. After getting under way, and commencing the towing service, there is constant danger on the open sea, when the disabled ship has no power of self-control. The hawsers are made as long as practicable, often 70 fathoms or more, in order to keep the vessels far apart. During the towing, the varying conditions of wind and wave are fruitful of casualties.

"The Great Northern's motive power was entirely disabled; her propeller useless, and bearing up against her rudder; she was without yards or square sails; and she had only a fore and aft rigging, which was not sufficient to give her steerage way. She was in ballast, and liable to plunge and to sheer *ad libitum*. She did sheer much during the towing, and brought injurious straining upon the engines of the 'Sagamore.' The latter ship was in constant danger of her propeller fouling with

the towing hawser. This vessel had \$237,000 of values at risk, and brought the 'Great Northern,' worth \$100,000, safely to port. Fortunately for both ships, the weather and sea proved favorable after the towage was commenced. This last fact seems to be relied upon by the respondents as a reason for diminishing the amount which might otherwise be awarded to the salvors. Sufficient has been said to show that this principle does not hold good in admiralty. The good fortune of better weather and a quieter sea, which occurred during the course of the towing service, inured alike to both ships, and does not entitle the salved ship to claim the benefit of it, to the injury of the salving vessel." "*The Great Northern*," 72 Fed., pp. 681-683.

"At the trial the master and officers of the 'Gallego,' in contradiction of their protest, declared that they never supposed the 'Gallego' to be in any danger. It is easy after the event to deny fear; but, if it be true that this steamer was under command of a master unable to see any peril in the condition of his ship as she was when the 'Lone Star' came to her aid, that circumstance, in my opinion, would enhance the peril of the ship. The acts of the master at the time speak louder than his subsequent words, and show knowledge that the position of his ship was one of peril. Of course, it can be said that, being sound save in respect to her rudder, the 'Gallego,' for a time more or less extended, as the chance of favorable winds and of being fallen in with by some other vessel not only willing but able to aid her might have favored, would have floated; but, such chance not favoring her, destruction in the end was to be expected, for she was upon the sea without the knowledge and ability necessary to enable her, unassisted, to reach

a port of safety." *"The Gallego,"* 30 Fed., 273-274.

"If the assistance of a salvor is sought and if his assistance is received, it is not competent for those who have asked and received that assistance to insist that by their own resources they could have saved themselves." *"The Huntsville,"* Fed. Cas. No. 6916, page 1005.

"If the vessel is in a situation of actual apprehension, though not in actual danger, and the assistance of the salvors is requested by and rendered to the persons in charge of the vessel, they cannot plead that they are not bound to pay for the services rendered on the ground that the vessel would have been saved if left in her former position. 2 *Pars. Shipp. & Adm.*, 283." *"The Jewell,"* 41 Fed., 104.

"The taking in tow of a disabled vessel on the open sea by a tug is always a salvage service." *"The Lottie E. Hopkins,"* 133 Fed., 405.

"Assisting a vessel 'in the situation of actual apprehension, though not of actual danger,' is salvage. *'The Raikes,* 1 Hagg., 247; *'The Phantom,'* L. R. 1 Adm., 58; *'The Joseph C. Griggs,'* 1 Ben. 81, Fed. Cas. No. 6,640. 'The degree of danger is immaterial in considering the nature of the service.' *'The Westminster,'* 1 W. Rob., 232." *"The Lowther Castle,"* 195 Fed., 605.

"The extent of the risk assumed in undertaking to tow a disabled vessel is not to be gauged by the results alone; and the fact that the towing line was speedily taken, and that no mishap occurred, is entitled to consideration only so far as it tends to

show the state of the wind and sea." *"The Waverly,"* 78 Fed., 191.

"The valuable services were rendered by the ship and her machinery, the master and crew doing only their ordinary duty, for which they were paid by the owners, and yet on principles of salvage the men must receive a share of the reward. No amount of reward to owner and machinery will so stimulate and encourage efforts to save life and property in peril on the high seas as will moderate rewards to master and crew and who are on hand to control ship and machinery, and are the effective agents to set the machinery in motion." Judge Pardee in the *"New Orleans,"* 23 Fed., 911.

"Where salvage services which occupied less than a day are of the lowest order, and the crew of the tugs perform only services in the ordinary course of employment, the award to them should not be more than two months' pay each." *Ulster S. S. Co. vs. Cape Fear Towing & Transportation Co.,* 94 Fed., 214.

The cases cited by appellant, as to what are salvage services, are not in any way applicable to the case at bar. They are of two entirely different kinds: One where the vessel rendering the assistance was regularly engaged in the business of towing; the other where the vessel assisted retained sufficient motive power to be able to navigate. In the case of *"The Besnard"* the vessel was well able to navigate and also the assistance was rendered by a tug.

In this case, the "Santa Clara" was a freight and passenger vessel. She was not engaged in the business

of towing, and in fact had no towing facilities whatsoever. She had to take and use the "Roanoke's" hawser. Also, the "Roanoke" was entirely deprived of motive power. She had absolutely no means of proceeding.

With great respect for the memory of the able judge who decided the case of the "Pfluger," we submit that that case was erroneously decided upon both points passed upon.

Although the "Pfluger" was *not* entirely deprived of motive power, we submit that the facts stated in the opinion show that the services rendered her were salvage services. As to the other point, neither the aiding vessel nor her crew were engaged in the business of towing; therefore, the crew owed no duty to the "Pfluger," and should have been compensated for the assistance rendered, whether that assistance was salvage service or not. The reason is obvious. The seaman's contract is with his own ship. He owes a particularly rigorous duty to that ship, but to no other ship. He must not fail in obedience to orders, so far as his own ship is concerned; but he can not lawfully be compelled to perform labor for the benefit of another vessel, except where that is the regular business in which his own vessel is engaged. If he aids such other vessel, he is entitled to compensation therefor.

Williamson vs. "The Alphonso," Fed. Cas.
No. 17,749.

However, the argument is merely for the purpose of showing the reasons why the "Pfluger" was incorrectly decided; for, as far as the case at bar is concerned, the question is put at rest by the act of the 62nd Congress, 2nd Session, Chap. 268, approved Aug. 1, 1912, effective July 1, 1912, and the pertinent parts of which read as follows:

"An act to harmonize the national law of salvage with the provisions of the international convention for the unification of certain rules with respect to assistance *and* salvage at sea, and for other purposes.

Sec. 1. "That the right to remuneration for assistance *or* salvage services shall not be affected by common ownership of the vessels rendering and receiving such assistance or salvage."

Counsel for appellant fall into the error of supposing that this law has made some change in the settled principles of the law of salvage, and that we have so urged. We have never urged anything of the kind. The law is merely a statutory declaration of what was before well-settled principles of the law of salvage in this country. We have long been familiar with the well-settled principle, enforced by the Courts, before the above statutory declaration, that common ownership was no bar to recovery of compensation by the crew of the salving vessel (*Lewis vs. A Lot of Whalebone*, 51 Fed., 924; *Gilchrist, etc., Co. vs. 110,000 Bushels of Wheat*, 120 Fed., 434; *Rees vs. U. S.*, 134 Fed., 146). The same is true as to assistance ren-

dered to another vessel. The statute only declares the general principles and applies it to the case of common ownership. Sec. 2079 of the Civil Code of California has always been an absolute nullity, as far as any proceeding *in rem* for salvage is concerned (*"The Queen,"* C. C. A., 9th Cir., 94 Fed., 188, and cases cited).

Of course it can not be seriously contended that "assistance" and "salvage" are used as synonyms in the statute, where the two words are both conjunctively and disjunctively united.

AMOUNT OF AWARD.

The amount of the award was, if anything, too small, but the district court, in the exercise of a sound discretion, decided that the compensation to each of the crew should be half a month's pay. This amount is a subject peculiarly within the discretion of the trial court in admiralty, and will not be disturbed except in a very clear case of mistake.

"In the present case, the District Court have awarded one-half of the prize proceeds, or salvage, to the captors. It was an exercise of sound discretion; and this court would, with extreme reluctance, interfere with that discretion, unless in a very clear case of mistake." *"The Dos Hermanos,"* 10 Wheat., 310.

"If I were to reverse the decree of the district court in this case, I do not perceive any solid distinction, on which I could rest it. It was an exer-

cise of discretion, which violated no principle, and does not seem to have assumed any extraordinary latitude. It is best for all parties, that litigation of this nature should be speedily settled; and when I can not perceive an undue inflammation of the rate of salvage, I do not think, that, sitting in an appellate court, I should nicely balance the subordinate distinctions of cases, whose complexions carry a plain merit and humane interposition." Judge Story in "*The Panama*," Fed. Cas., 14,319, p. 490.

As to the amount of costs, which is called to the attention of the Court, we wish to say there should have been no costs in this case. It should never have been allowed to go into court. We wish to say further that a large part of the costs were made necessary by claimant's methods of examination (see particularly Ap., pp. 127-221) and because of the course adopted by claimant to compel proof of the fact, which should have been admitted, that libelants were part of the crew of the "Santa Clara." Both vessels were owned by the same owner. The answer, sworn to by claimant's president, denied on information and belief, that many of those named in the libel were seamen or part of the crew of a vessel owned by claimant on April 10th. After exceptions to the answer had been sustained and *after* testimony had been taken as to the presence of some of these very same libelants on board (*which testimony was given by claimant's own president*, in the presence of claimant's counsel), an amended answer was filed, which was sworn to by claimant's assistant secretary (who is also one of claim-

ant's counsel) and which sworn amendment *denied positively* the presence on board of the persons referred to. This recital, without comment, shows claimant's attitude toward facts which good faith required it to admit.

THE EFFECT OF THE RECENT STATUTE.

The reasons for the award are stated at length by the trial court in its opinion. There is no mention therein of the recent statute nor any suggestion that it was in any way considered by the trial judge in reaching his conclusion as to the amount of the award. Very much the contrary. It is as plain as a pikestaff from that opinion, that the trial judge did not consider that life salvage was in any way a factor in this case. Further, counsel for appellant knows perfectly well that we never have contended that there were any lives in immediate danger on the "Roanoke." What we suggested to the trial court upon this point, and which that court ignored, was in these words:

"We do not wish to have it thought that we are now claiming that the libelants saved the lives of any of the many persons on board of the 'Roanoke' from any *immediate* or *absolute* danger from the time that the 'Roanoke' anchored until the 'Santa Clara' dropped her off Port Harford. Our contention is this:

"What constitutes a salvage service as to property also constitutes a salvage service as to life, if there be living persons on board of the property to which the salvage service is rendered.

"As it is plain to us the officers and crew of the

'Santa Clara' voluntarily rendered assistance to a vessel needing it and relieved her from danger and distress and from situations from which danger was to be and was reasonably apprehended, so these services were, as to the property, salvage services; and, therefore, must necessarily be salvage services as to the living persons on the 'Roanoke'." (*"The Flottbek,"* 118 Fed., 960, and *"The Plymouth Rock,"* 9 Fed., 416-418).

CONCLUSION.

Claimant would have this court believe that if Captain Jessen had not received orders from his owners, he would not have gone to the assistance of the "Roanoke." In other words, claimant would have this court believe that a master in its employ, when he receives urgent appeals for help, would deliberately take the chance of violating section 2 of the recent statute. For, of course, it was not "obvious" to Captain Jessen that "the predicament of the 'Roanoke' was not at all serious." How could it be, when he had asked Dickson if assistance was *absolutely* necessary and had by him been told, "We need your assistance at once"? He knew this by wireless. Wireless has utilized a newly-discovered law of nature, but claimant has developed a sixth sense in a master that enables him to know what is not so. It is even directly contrary to Captain Jessen's own testimony (Ap., 70, 73-79).

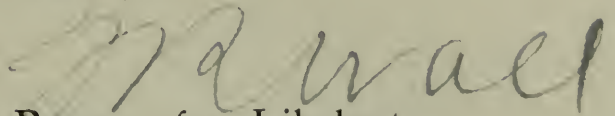
With such a foundation, claimant argues that when Jessen went, he went in obedience to orders from his owner. While this is opposed to the fact, claimant

should be ashamed to present such an argument. After the terrible lesson of the "Santa Rosa," owners should have learned that it is their duty not to interfere in any way with the master of a vessel at sea in the exercise of his own judgment. He is put there to exercise that very judgment. The owner's duty is to give the master all of the information possible, and then say to that master: "Act as your best judgment tells you."

While Jessen went to the assistance of the "Roanoke" in response to her calls for aid, what difference would it make, as far as the libelants are concerned, if he had gone only in response to orders from his owner? None; for the libelants owed no duty to the "Roanoke." And, further, claimant asks the court to find a means for evading the plain letter of the statute. Suppose the master of a vessel hears the cry of another vessel in dire distress. Both vessels belong to the same owner. The owner gets this same information, and sends orders to the first vessel to proceed to the assistance of the other. The owner afterwards comes into court and says the case falls within the law in every other respect; but it was not salvage, because he ordered his master to the scene. How long would it be before every owner would send out such orders instantly upon every such occasion, or else give standing orders to every one of their masters? Such a plea as claimant advances should get short shrift in the admiralty.

We respectfully submit the decree should be affirmed, with damages under Rule 30.

Respectfully submitted.

A handwritten signature in cursive script, appearing to read "J. A. Wall". The ink is dark and the signature is written in a fluid, connected style.

Proctor for Libelants.

